Supreme Court, U.S.
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041312 FEB 1 - 2005
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No. ___

IN THE

# Supreme Court of the United States

BISHOP OF THE WAY THOM SATTERLEE, DIRECTOR NORTHWEST HOUSING TRUST STEVEN MILTON: GRAY AND NAZIRITE ELDER OF TRUTH FLOYD TIMOTHY: RYAN,
*Petitioners*,

v.

TERRITORY/STATE OF WASHINGTON, as agent for the United States of America; BRUCE AND AUDREY CHIKALLS; WELLS FARGO HOME LOAN, CORY REIN; QUALITY LOAN SERVICE CORP, FIRST HORIZON HOME LOAN CORPORATION, WILSHIRE CREDIT CORPORATION, AND COREY MCCRARY, a minor, by and through his mother LORRIE CANADA,
*Respondents*.

**Petition for a Writ of Certiorari to the Supreme Court of the State of Washington**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether the State's assertion that it is the "Creator" and therefore can foreclose non-members of State's established religious institution from acting to protect their property rights and interests, and, whether the establishment of a State religion can constitutionally and lawfully deny and prevent the inhabitants of Washington state the quiet enjoyment and exercise their property and political rights under the United States' Constitutional "guarantee to every state in this union [of] a republican form of government."

## PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the Washington State Supreme Court.

The petitioners here and appellants below are Bishop of the Way Thom Satterlee: Director, Northwest Housing Trust Steven Milton: Gray, and Nazirite Elder of Truth Floyd Timothy: Ryan.

The appellees below and respondents here are TERRITORY/STATE OF WASHINGTON, as agent for the United States; Bruce and Audrey Chikalla; Quality Loan Service Corp; First Horizon Home Loan Corporation; Wilshire Credit Corporation and Corey McCrary, a minor, by and through his mother Lorrie Canada

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioners state as follows:

There is no parent or publicly held company that owns any stock in the Petitioners. Petitioners are natural persons created and established by God and recorded, as a courtesy to secular authorities, pursuant to RCW 24.12. Petitioners bring this petition in their individual capacities as "natural persons," in propria persona, as provided for by RCW 24.12.

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*Petitioners*,

v.

TERRITORY/STATE OF WASHINGTON, as agent for the United States of America; BRUCE AND AUDREY CHIKALLS; WELLS FARGO HOME LOAN, CORY REIN; QUALITY LOAN SERVICE CORP, FIRST HORIZON HOME LOAN CORPORATION, WILSHIRE CREDIT CORPORATION, AND COREY MCCRARY, a minor, by and through his mother LORRIE CANADA,
*Respondents*.

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**Petition for a Writ of Certiorari to the Supreme Court of the State of Washington**

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## PETITION FOR A WRIT OF CERTIORARI

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## OPINIONS BELOW

The Opinion and Dissent of the Washington State Supreme Court in *Cedar County Committee v Munro* is reported at 134 Wn.2d 377, 950 P.2d 446 (1998) and is reprinted in Appendix to the Petition "Pet.App" 33a

The Opinion the Washington Court of Appeals in *Freedom County v. Snohomish County Freedom County v. Snohomish County*, 95 Wn. App. 839, 977 P.2d 612 (1999), review denied, 139 Wn.2d 1022 (2000) is reported at 95 Wn. App. 839, 977 P.2d 612 (1999), review denied, 139 Wn.2d 1022 (2000). and is reprinted in Appendix to the Petition "Pet.App" 25a

The Opinion the Washington Court of Appeals in *Satterlee, et al. v Snohomish County* is reported at 115 Wn. App. 229 and is reprinted in Appendix to the Petition "Pet.App" 17a

The Washington State Supreme Court's Ruling Denying Review in Cause No. *75607-4* is reprinted in Appendix to the Petition "Pet.App" 45a

The Washington State Supreme Court's Order in Cause No. *75607-4* is reprinted in Appendix to the Petition "Pet.App" 67a

The Washington State Supreme Court's Order in Cause No. *75573.6* is reprinted in Appendix to the Petition "Pet.App" 47a

The Washington State Supreme Court's Ruling Denying Review in Cause No. *75573.6* is reprinted in Appendix to the Petition "Pet.App" 63a

The Washington State Supreme Court's Ruling Denying Review in Cause No. *75640-6* is reprinted in Appendix to the Petition "Pet.App" 65a

## JURISDICTION

The Washington State Supreme Court entered its Orders on November 3 & 4, 2004 respectively. This Court has jurisdiction under 28 USC § 1257 and §6 of the Organic Act of March 2, 1853 Pet.App. 1a

## STATUTES AND TREATIES INVOLVED

This case involves the following laws and statutes:

Section 9 of the Organic Act, enacted by the Senate and House of Representatives of the United States in Congress assembled, approved March 2, 1853. Pet.App. 1a

Chapter 79 §2 of Washington Sessions laws of 1915, codified in the Revised Code of Washington at 24.12.020

The April 24, 1854 Act of the Legislative Assembly of the Territory of Washington entitled "AN ACT SUPPLEMENTARY TO AN ACT ENTITLED 'AN ACT RELATIVE TO COUNTIES,; AND TO REPEAL PORTIONS THEREOF;" the January 17th, 1863 Act of the Legislative Assembly of the Territory of Washington entitled "AN ACT IN RELATION TO COUNTIES," each of which are codified in the Revised Code of Washington at 36.09 et. seq.

International Covenant on Civil and Political Rights ratified by the Congress of the United States of America on 5 Oct 1977 Pet.App. 8a

## STATEMENT OF THE CASE

This is one of the most important civil, property and political rights cases to ever reach this court. Resolution of the questions presented here will determine the applicability of the official public policy of the United States, and, the consequence of the constitutionally protected liberty rights of natural persons. Specifically the records in the cases joined in this petition for certiorari present for determination whether a State established religion may constitutionally deny natural persons their right to protect their property rights and interests, and, whether Citizens of the United States inhabiting Washington territory or state, as the case may be, are entitled to enjoy and exercise their political rights pursuant to United States' Constitution's "guarantee to every state in this union [of] a republican form of government."

**A. Factual Background**

Petitioners join in this petition for certiorari by alleging the following ultimate facts and circumstances providing notice of fraud or mistake:

Respondent TERRITORY/STATE OF WASHINGTON purports to have been admitted to the union of the several states of the United States in 1889. Senate Miscellaneous Document 55, the constitution for The State of Washington, was published on January 28, 1889 in the congressional record. On February 22, 1889, following publication of its constitution in the congressional record, Congress admitted The State of Washington into the union of the several states of the United States. Petitioners respectfully move the court take judicial notice of the foregoing facts. Judicial notice is intended to avoid the necessity of formally introducing evidence in those limited circumstances where the fact sought to be proven is so well known that evidence in support of the fact is unnecessary. *Hebden v Workmen's Compensation Appeal Bd. (Bethenergy Mines, Inc.)*, 142 Pa Cmwlth 176, 597 A2d 182, app gr 529 Pa 659, 604 A2d 251 and revd on other grounds (Pa) 632 A2d 1302.

Respondent TERRITORY/STATE OF WASHINGTON failed to hold elections to fill the offices mandated by the constitution received and published by the congress in the congressional record on January 28, 1889. Respondent TERRITORY/STATE OF WASHINGTON declined or refused to comply with the schedule mandated by constitution published by congress on January 28, 1889, because as Mr. Voorhees is quoted, in the January 18, 1889 Congressional record, as saying "that Washington did adopt a constitution in 1878 . . . that . . . we have grown away from the constitution made in 1878." Judicial notice respectfully requested. Respondent TERRITORY/STATE OF WASHINGTON allegedly replaced its congressionally published constitution with a document purporting to be the constitution for the State of Wash-

ington which fraudulent document is published in title 0 of the Revised Code of Washington. Judicial notice respectfully requested.

Respondent TERRITORY/STATE OF WASHINGTON and each of its officials know or reasonably should know that the people of the Territory of Washington ratified the 1878 constitution on November 5, 1878. Respondent TERRITORY/ STATE OF WASHINGTON and each of its officials know or reasonably should know that at no time relevant hereto has the provisions for amending, modifying or repealing the ratified 1878 constitution ever been complied with. Respondent TERRITORY/STATE OF WASHINGTON and each of its officials know or reasonably should know that on December 13, 1889, an unknown and unidentified authority purported to provide that the words "Territory and Territory of Washington shall be construed to mean State and State of Washington" The Act purportedly "providing the words Territory and Territory of Washington shall be construed to mean State and State of Washington, and declaring an emergency to exist, was passed without an enacting clause on December 13, 1889. To the best of Petitioners information, knowledge and belief the December 13, 1889 Act is the only legislative act, of the TERRITORY/STATE OF WASHINGTON, without an enacting clause ever deemed lawful in the TERRITORY/ STATE OF WASHINGTON. The official records of the United States put into question the lawful and constitutional existence of Respondent TERRITORY/STATE OF WASHINGTON. The constitutional and lawful existence of Respondent is an issue of fact having a direct bearing and consequence on the validity of the records and actions of Respondent TERRITORY/STATE OF WASHINGTON.

Petitioner's foregoing allegations of ultimate fact set out the Respondent's previous knowledge, state with particularity the circumstances and facts constituting either fraud or mistake establishing the legally impossible condition of a defacto

government for The State of Washington. The United States Supreme Court held in NORTON v. SHELBY COUNTY, 118 U.S. 425 (1886) "there can be no officer, either de jure or de facto, if there be no office to fill." Respondent TERRITORY/STATE OF WASHINGTON recognizes that "under a constitutional government such as ours, there can be no such thing as an Office de facto, as distinguished from an Officer de facto. Hence, the general rule that the acts of an officer de facto are valid has no application where the office itself does not exist." *Boyer v. Fowler*, 1 Wash.Terr. 101 (1860); 3 E. McQuillin, The Law of Municipal Corporations s 12.104 (3d ed. rev. 1973); De jure office as condition of a de facto officer, Annot., 99 A.L.R. 294 (1935) quoted from *Higgins v. Salewsky*, 17 Wn.App. 207, 562 P.2d 655.

Respondent TERRITORY/STATE OF WASHINGTON intentionally refused to fulfill the duty mandated by the 1889 constitution, under which it purports to be bound to and limited by, in 1997. Respondent TERRITORY/STATE OF WASHINGTON and members of its officially established religious association then engaged in a pattern of activities calculated to deny and deprive citizens of the United States and inhabitants on the land of their constitutionally guaranteed rights to freedom of religion, due process of law, civil rights and political rights.

**B. Proceeding Below**

Bishop of the Way Thom Satterlee, a natural person, was charged, tried and convicted for his good faith efforts to perform his fiduciary duties to the people of Freedom County and a religious trust over which he is the trustee. The full record shows that the purpose of charges and trial were politically motivated in an effort to stop him from fulfilling his official duties as the Chairman of the Board of Commissioners of Freedom County. Petitioner Bishop of the Way Thom Satterlee was denied the assistance of counsel at critical stages of the criminal proceedings against him as required

by a number of this court's decisions, and contrary to Respondent's own judicial holdings. Petitioner sought to bring each of the federal issues raised in this Petition for Writ of Certiorari before the several trial courts and Supreme Court of Washington in *Cedar County Committee v Munro*; *Freedom County v. Snohomish County*; *Satterlee, et al. v Snohomish County*; Petitioners Appeal of his criminal conviction and Petitioners Personal restraint Petition

The right to counsel at any stage of proceedings where there is a possibility of prejudice to the defendant. *Garrison v. Rhay*, 75 Wash.2d 98, 102, 449 P.2d 92 (1968) ("The constitutional right to have the assistance of counsel arises at any critical stage of the proceedings, and a critical stage is one in which there is a possibility that a defendant is or would be prejudiced in the defense of his case."); see also *Hamilton v. Alabama*, 368 U.S. 52, 53, 82 S.Ct. 157, 7 L.Ed.2d 114 (1961) (right to counsel attaches at any "critical stage in a criminal proceeding"). This means critical aspects of the proceeding must be conducted in the presence of defense counsel, with notice and opportunity for full participation on behalf of his client. Respondent ignored the legal standards established by this court and its own judiciary in order to contrive the unlawful conviction and imprisonment of Bishop of the Way Thom Satterlee.

Director Northwest Housing Trust Steven Milton: Gray, a natural person, was and has been denied hearing by Respondent TERRITORY/STATE OF WASHINGTON because the essential tenants and practices of his faith forbid and prohibit him from attending upon false gods, their prophets, priests, neophytes or acolytes. Because of that denial of fundamental due process of law he as denied and deprived of real property valued at approximately Two Hundred thousand dollars, purchased pursuant to contract and discharged by payment of certified funds, tendered as payment in full, on the underlying obligation contracted between Director Northwest Housing

Trust Steven Milton: Gray and Bruce and Audrey Chikalla. Petitioner raised and presented the federal issue of the establishment of a State religion was presented to the trial court and the State Supreme Court.

Nazirite Elder of Truth Floyd Timothy: Ryan, a natural person, was also denied hearing by Respondent TERRITORY/STATE OF WASHINGTON before an impartial court because of its religious doctrine and practice forbidding it from submitting to false religious institutions and their agents. Petitioner raised and presented the federal issue of the establishment of a State religion was presented to the trial court and the State Supreme Court.

Each of the aforementioned parties is defined by the legislature of the State of Washington as "natural persons."

## REASONS FOR GRANTING THE PETITION

### I. IT IS THE OFFICIAL POLICY OF THE UNITED STATES GOVERNMENT TO SUPPORT DEMOCRATIC INSTITUTIONS IN EVERY NATION, INCLUDING BUT NOT LIMITED TO THE SEVERAL STATES OF THE UNION OF THE UNITED STATES.

The President declared on January 20, 2005 that: "it is the policy of the United States to seek and support growth of democratic movements and institutions in every nation and culture, with the ultimate goal of ending tyranny in our world." This court has declared:

> "We have in this Republic a dual system of government, National and State, each operating within the same territory and upon the same persons; and working without collision, because their functions are different. There are certain matters over which the National Government has absolute control and no action of the State can interfere therewith, and there are others in which the State is supreme, and in respect to them the National

> Government is powerless. To preserve the even balance between these two governments and hold each in its separate sphere is the peculiar duty of all courts, pre-eminently of this—a duty oftentimes of great delicacy and difficulty." *South Carolina v. United States*, 199 U.S. 437, 26 S. Ct. 110, 50 L. Ed. 261.

It seems clear that court's exercise of its "peculiar duty" in reviewing the complete record establishing the jurisdiction of Respondent TERRITORY/STATE OF WASHINGTON will determine and prove whether this is indeed a nation of laws or merely an elaborate sham perpetrated for the benefit of a few interests. That the court has jurisdiction and power to review the complete record is clear. Each state is subject only to the delegations of power made in the United States constitution, and the limitations of power prescribed in their own Constitutions, and within its own territory are otherwise supreme. Its internal affairs are matters of its own discretion, provided that the Constitution delegates to the United States the power to "guarantee to every state in this Union a republican form of government." Art. IV §4. That expresses the full limit of national control over the internal affairs of a state.

## II. THE CONSTITUTION DELEGATES TO THE FEDERAL GOVERNMENT THE POWER TO "GUARANTEE TO EVERY STATE IN THE UNION A REPUBLICAN FORM OF GOVERNMENT.

The power to "guarantee to every state in this union a republican form of government" is a delegation of power necessary to protect the whole nation from a tyranny gaining hold within this nation's borders. Respondent TERRITORY/STATE OF WASHINGTON purports to be one of the several states of the union of the United States of America, and must be deemed to assent to that delegation of power to the United States. However, official records of the United States evidence that the entity doing business as the State of Washing-

ton and allegedly functioning under its 1889 state constitution is not the government granted admission to the union of the several states by the Congress of the United States on February 22, 1889. "By the enabling act of Congress, passed February 22, 1889, the territory of Washington became the state of Washington." *Ryan v. State*, 188 Wash. at 130

## III. THE PETITION SHOULD BE GRANTED FOR THE FOLLOWING SPECIFIC REASONS:

1) It is the Supreme Court's duty to make an independent examination of the record where there is a claim that a constitutionally protected right is involved. *Cox v Louisiana*, 379 US 536, 13 L Ed 2d 471, 85 S Ct 453

2) The record shows that Washington's courts have breached and violated their duty and obligation to enforce and protect every right granted and secured by the Constitution of the United States; *MOONEY v. HOLOHAN*, 294 U.S. 103 (1935) It is the duty of the state courts as much as of the federal courts, when the question of the validity of a state action is necessarily involved as being in alleged violation of any provision of the Federal Constitution, to decide that question and to hold the law void if it violates that instrument.

3) The records in each of Petitioners' cases show that Petitioners were denied hearing, before impartial court's having jurisdiction to hear such actions, resulting in a complete denial of fundamental due process of law under the United States constitution.

4) Official records of the United States and the State of Washington as well as historical records evidence massive fraud or mistake against United States Citizens to deny Citizens, inhabited within the territorial limits of Respondent TERRITORY/STATE OF WASHINGTON, of their right to the republican form of government guaranteed by Article IV §4 of the United States constitution.

5) The records in each of the Petitioners' cases suggest the surreptitious establishment, by actors of Respondent TERRITORY/STATE OF WASHINGTON, of a State established religion.

6) The official record demonstrates that the establishment of a State established religion was made possible, by the fraud or mistake of officials of Respondent TERRITORY/ STATE OF WASHINGTON in their unconstitutional replacement of the 1878, state constitution. The January 28, 1889 congressional record evidences that congress admitted the State of Washington into the union of the several states of the union under the 1878 constitution.

7) The cases again present this court with their duty to say where the individual's freedom ends and the State's power begins. Now as always determination of those boundaries is delicate, perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme of government to the great, the indispensable democratic freedoms secured by the First Amendment. Cf. *Schneider v. State of New Jersey*, 308 U.S. 147 , 60 S.Ct. 146; *Cantwell v. Connecticut*, 310 U.S. 296 , 60 S.Ct. 900, 128 A.L.R. 1352; *Prince v. Massachusetts*, 321 U.S. 158 , 64 S.Ct. 438. That priority gives these liberties sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice. Compare *United States v. Carolene Products Co.*, 304 U.S. 144, 152 , 153 S., 58 S.Ct. 778, 783, 784.

8) The purpose of a writ of certiorari is to bring before the court for inspection the record of the proceedings of an inferior tribunal in order that the superior court may determine from the face of the record whether the inferior court has exceeded its jurisdiction or has not proceeded according to the essential requirements of the law. *Hunt v. Norton*, 68 Ariz. 1, 198 P.2d 124, 5 A.L.R.2d 668 (1948); *Adams v.*

*Arkansas* State Highway Commission, 235 Ark. 808, 363 S.W.2d 134 (1962); *Board of Trustees of Leland Stanford Junior University v. State Bd. of Equalization*, 1 Cal. 2d 784, 37 P.2d 84, 96 A.L.R. 775 (1934); *Malone v. City of Quincy*, 66 Fla. 52, 62 So. 922 (1913) (distinguished by, *State v. York*, 90 Fla. 625, 106 So. 418 (1925)); *Rochon v. Rodriguez*, 293 Ill. App. 3d 952, 228 Ill. Dec. 416, 689 N.E.2d 288 (1st Dist. 1997) (distinguished on other grounds by, *Flynn v. Hillard*, 303 Ill. App. 3d 119, 236 Ill. Dec. 589, 707 N.E.2d 716, 79 Fair Empl. Prac. Cas. (BNA) 742 (1st Dist. 1999)); *Polk County Sheriff v. Iowa Dist. Court for Polk County*, 594 N.W.2d 421 (Iowa 1999); *Lenz v. Cobo*, 338 Mich. 383, 61 N.W.2d 587 (1953); *Banks v. City of Greenwood, By and Through City Council*, 404 So. 2d 1038 (Miss. 1981); *State ex rel. St. Louis Union Trust Co. v. Neaf*, 346 Mo. 86, 139 S.W.2d 958 (1940); *State ex rel. Dreyer v. Brekke*, 75 N.D. 468, 28 N.W.2d 598 (1947) (limitation of holding on other grounds recognized by, *Lamplighter Lounge, Inc. v. State ex rel. Heitkamp*, 510 N.W.2d 585 (N.D. 1994)); *Berryman v. Howell*, 1944 OK 232, 194 Okla. 259, 149 P.2d 505 (1944); *State v. Coleman*, 58 R.I. 6, 190 A. 791, 109 A.L.R. 787 (1937). The purpose of certiorari is to review the judicial action of inferior courts and tribunals in regard to substantial questions of law affecting the merits of a case. *State v. Forte*, 159 Vt. 550, 624 A.2d 352 (1993).

## IV. OFFICIAL GOVERNMENT AND HISTORICAL RECORDS PROVE THAT THE ENTITY PRETENDING TO BE THE STATE OF WASHINGTON IS A FRAUD UPON THE PEOPLE AND CONGRESS OF THE UNITED STATES.

Some historical background is necessary to show how the federal government and the people of the State of Washington were duped in 1889 into fraudulently continuing Territorial Government of Washington, established by congress on March 2nd, 1853.

Section 6 of the 1853 Organic Act conferred the legislative power of the territory "to all rightfully subjects of legislation, not inconsistent with the constitution and laws of the United States." Section 6 of the 1853 Organic act specifically provided that "[a}ll the laws passed by the legislative assembly shall be submitted to the congress of the United States, and, if disapproved, shall be null and of no effect."

The November 9, 1877 act of the Territorial legislative assembly entitled "An Act to provide for calling a convention to frame a constitution for a State of Washington and submitting the same to the people for ratification" was submitted to and not disapproved by the congress of the United States.

## V. THE ACTS AND OMISSIONS OF THE DE-FACTO GOVERNMENT PRETENDING TO BE THE STATE OF WASHINGTON VIOLATE INTERNATIONAL TREATIES AND FUNDAMENTAL LAW.

Respondent TERRITORY/STATE OF WASHINGTON laws, acts and omissions are in conflict international treaties ratified by the Congress of the United States. The Court held in *Zschernig v. Miller*, 389 U.S. 429, 88 S. Ct. 664, 19 L. Ed. 2d 683 (1968) that where a state's "laws conflict with a treaty, they must bow to the superior federal policy." Treaties are as binding within the territorial limits of the states as they are elsewhere throughout the dominion of the United States. *Baldwin v. Franks*, 120 U.S. 678, 7 S. Ct. 656, 32 L. Ed. 766 (1887). Treaties are binding not only upon the government, but upon every Citizen. *Kennett v. Chambers*, 55 U.S. 38, 14 How. 38, 14 L. Ed. 316 (1852). The provisions of the treaty supersede and render nugatory all conflicting provisions in the laws or constitution of any state. *Clark v. Allen*, 331 U.S. 503, 67 S. Ct. 1431, 91 L. Ed. 1633, 170 A.L.R. 953 (1947) Also, the power of a state to refuse enforcement of rights based on a foreign law which runs counter to its public policy must give way before a superior federal policy evidenced by a

treaty or international compact or agreement. *U.S. v. Pink*, 315 U.S. 203, 62 S. Ct. 552, 86 L. Ed. 796 (1942). A state cannot refuse to honor treaty rights because of fear that valid international agreements may possibly not work completely to the satisfaction of state authorities. *Kolovrat v. Oregon*, 366 U.S. 187, 81 S. Ct. 922, 6 L. Ed. 2d 218 (1961).

Respondent TERRITORY/STATE OF WASHINGTON has codified provisions for the creation and establishment which do not conflict with the International Covenant on Civil and Political Rights ratified by the congress of the United States. However, Respondent TERRITORY/STATE OF WASHINGTON refuses to honor the treaty rights established by the International Covenant on Civil and Political rights because to do so did not work the satisfaction of state authorities.

## VI. THE DEFACTO GOVERNMENT OF WASHINGTON STATE HAS ESTABLISHED A STATE RELIGION BY CLAIMING TO BE PETITIONER'S "CREATOR."

The Supreme Court has stated that the term "religion" has reference to one's views of one's relation to his or her Creator and to the obligations these views impose of reverence for the Creator's being and character, and of obedience to the Creator's will. It is often confounded with the cultus or form of worship of a particular sect, but is distinguishable from the latter. *Davis v. Beason*, 133 U.S. 333, 10 S. Ct. 299, 33 L. Ed. 637 (1890) (called into doubt on other grounds by, *Church of Scientology Flag Service Organization, Inc. v. City of Clearwater*, 2 F.3d 1514 (11th Cir. 1993)) and (abrogated on other grounds by, *Romer v. Evans*, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539, 70 Fair Empl. Prac. Cas. (BNA) 1180, 68 Empl. Prac. Dec. (CCH) ¶44013 (1996)) and (abrogation recognized by, *Wolf v. Sundquist*, 955 S.W.2d 626 (Tenn. Ct. App. 1997)).

Respondent TERRITORY/STATE OF WASHINGTON presumes to be the creator of each of the petitioners hereto. The exercise and enforcement of such a presumption violates Petitioners' religious doctrines by requiring Petitioners' to violate God's First Commandment, and, constitutes an establishment of an official State religion. Petitioners deny that Respondent TERRITORY/STATE OF WASHINGTON is anything other then a fraudulently imposed government pretending to have been established by the consent of the people it presumes to govern. The First Amendment's provision respecting freedom of religion sought to guard against any repetition of previous religious struggles by prohibiting the establishment of a State religion and by securing to every sect the free exercise of its faith. "The oppressive measures adopted and the cruelties and punishments inflicted by the governments of Europe for many ages, to compel parties to conform in their religious beliefs and modes of worship to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of persons and enforce an outward conformity to a prescribed standard, led to the adoption of the [First] Amendment." *Davis v. Beason*, ibid. The amendment embraces both the concepts of freedom to believe and freedom to act.

Government is prohibited from interfering with or attempting to regulate any Citizen's religious beliefs, from coercing a Citizen to affirm beliefs repugnant to his or her religion or conscience, such as that he the natural person is the creation of government, and from directly penalizing or discriminating against a Citizen for holding beliefs contrary to those held by anyone else. *School Dist. of Abington Tp., Pa. v. Schempp*, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963). Petitioners believe that they are creations of a Divine Creator and are not creation of a government established men for the benefit of men. Because Petitioners beliefs are rooted in religion they are entitled to the protections of the Free exercise clause of the First Amendment. Only beliefs rooted

in religion are protected by the Free Exercise Clause of the First Amendment, which, by its terms, gives special protection to the exercise of religion. *Thomas v. Review Bd. of Indiana Employment Sec. Division*, 450 U.S. 707, 101 S. Ct. 1425, 67 L. Ed. 2d 624, 25 Fair Empl. Prac. Cas. (BNA) 629, 25 Empl. Prac. Dec. (CCH) ¶31662 (1981).

Respondent TERRITORY/STATE OF WASHINGTON cannot intrude into the consciences of persons or compel them to believe contrary to their faith, or think contrary to their convictions. See *Fowler v. State of R.I.*, 345 U.S. 67, 73 S. Ct. 526, 97 L. Ed. 828 (1953). The Free Exercise Clause withdraws from legislative power, both state and federal, the exertion of any restraint on the free exercise of religion, since the clause's purpose was to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority. *School Dist. of Abington Tp., Pa. v. Schempp*, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963). The door of the Free Exercise Clause is tightly closed against any governmental regulation of religious beliefs as such, including but not limited to the State's requirement that Petitioners accept the presumption that they are "Creations" of the State. See *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965, 9 Fair Empl. Prac. Cas. (BNA) 1152 (1963). The Supreme Court has also pointed out that the Free Exercise Clause extends to religious organizations the same right to be free from governmental coercion as is extended to individuals. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 73 S. Ct. 143, 97 L. Ed. 120 (1952); *Swan v. First Church of Christ, Scientist, in Boston, Mass.*, 225 F.2d 745 (9th Cir. 1955).

The Free Exercise of Religion Clause of the First Amendment prohibits misuse of secular governmental programs to impede the observance of one or all religions or to discriminate invidiously between religions. The Free Exercise of Religion Clause may condemn certain applications clashing with

imperatives of religion and conscience, when the burden on First Amendment values is not justifiable in terms of the government's valid aims. *Gillette v. U. S.*, 401 U.S. 437, 91 S. Ct. 828, 28 L. Ed. 2d 168 (1971), reh'g denied, 402 U.S. 934, 91 S. Ct. 1521, 28 L. Ed. 2d 869 (1971).

## VII. THE DEFACTO GOVERNMENT OF WASHINGTON STATE LIMITS THE EXERCISE CONSTITUTIONALLY GUARANTEED RIGHTS TO THOSE INDIVIDUALS WILLING TO "TOSS A PINCH OF INCENSE UPON THE ALTER OF ITS FALSE GOD."

Respondent TERRITORY/STATE OF WASHINGTON conditions receipt of the important right of due process of law upon conduct proscribed by Petitioners religious faiths. Further Respondent TERRITORY/STATE OF WASHINGTON has denied and deprived each of the Petitioners their constitutionally guaranteed rights to due process of law, civil, property and political rights because of Petitioners' conduct which is mandated by a religious belief, which is a clear infringement upon free exercise. *Thomas v. Review Bd. of Indiana Employment Sec. Division*, 450 U.S. 707, 101 S. Ct. 1425, 67 L. Ed. 2d 624, 25 Fair Empl. Prac. Cas. (BNA) 629, 25 Empl. Prac. Dec. (CCH) ¶31662 (1981).

While the First Amendment freedom to exercise religion grants absolute protection to a person's freedom to believe and profess whatever religious doctrines the person desires, a person's conduct pursuant to his or her religious beliefs remains subject to regulation for the protection of society, and a person's freedom to act must have appropriate definition to preserve enforcement of that protection. *U.S. v. Meyers*, 95 F.3d 1475 (10th Cir. 1996), cert. denied, 118 S. Ct. 583 (U.S. 1997). In these cases Respondent TERRITORY/STATE OF WASHINGTON power to regulate is exercised in such a manner as to unduly infringe the protected freedoms of Petitioners.

Courts have defined a religious sect as a body or number of persons, united in tenets, but constituting a distinct organization or party holding sentiments or doctrines different from those of other sects or people. See *Bennett v. City of La Grange*, 153 Ga. 428, 112 S.E. 482, 22 A.L.R. 1312 (1922).

In the opinion Justice Storey delivered in *Terrett v. Taylor*, (1815) 9 Cranch, 43, 3 L. ed. 650, stated that "laws enacted for religious purposes evidently pre-suppose the existence of churches with their general rights and authorities growing out of the common law. What those rights and authorities are, need not be minutely stated. It is sufficient that, among other things, the church was capable of receiving endowments of land, and that the minister of the parish was, during his incumbency, seized of the freehold of its inheritable property, as emphatically persona ecclesiae, and capable, as a sole corporation, of transmitting that inheritance to his successors." A 'corporation sole' consists of one person only and his successors in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, so that the successor becomes the corporation on the person's death or resignation. *Doe v. Gelineau*, 732 A.2d 43 (R.I. 1999). Thus By the operation of these statutes and the common law, the lands thus purchased became vested, either directly or beneficially, in the Episcopal Church. The minister for the time being was seized of the freehold, in law or in equity, jure ecclesioe, and, during a vacancy, the fee remained in abeyance, and the profits of the parsonage were to be taken by the parish for their own use.

Respondent TERRITORY/STATE OF WASHINGTON has determined and ruled that none of the petitioners hereto are members of the State's established religion, a fact with which none of the Petitioners' disagree. However, constitutionally protected rights are not and should not be dependant upon adherence to or membership in any particular

religious sect, organization or cult be it dedicated to the State, Allah, Jehovah, Jesus the Christ, Justitia or any other religious personage. **IMMEDIATE REVIEW IS URGENTLY NEEDED**

## CONCLUSION

Because Respondent TERRITORY/STATE OF WASHINGTON and its various agents are without lawful existence and the deprivations perpetrated by each of them were concluded without lawful jurisdiction **IMMEDIATE REVIEW IS URGENTLY NEEDED**

Respectfully submitted,

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## APPENDIX A

Relevant and pertinent provisions of the March 2nd 1853

ORGANIC ACT
AN ACT

TO ESTABLISH THE TERRITORIAL GOVERNMENT
OF WASHINGTON

Sec. 6 . . . All the laws passed by the legislative assembly shall be submitted to the congress of the United States, and if disapproved, shall be null and of no effect: . . . and all such laws, or any law or laws inconsistent with the provisions of this act, shall be utterly null and void.

Sec. 9 . . . Writs of error, and appeals from the final decisions of said supreme court, shall be allowed and may be taken to the supreme court of the United States in the same manner as from the circuit courts of the United States, where the value of the property, or the amount in controversy, shall exceed two thousand dollars, and each of said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States; and also all cases arising under the the laws of said territory, and otherwise. . . .

## APPENDIX B

Relevant Provisions of the 1878 Washington Constitution

*Article V Declaration of Rights*

Section 1.

All political power is inherent in the people, and all free governments were founded on their authority.

Sec. 2.

The people in this state have the sole right to alter or abolish their constitution and form of government whenever they deem it necessary to the safety and happiness provided such changes be not repugnant to the Constitution of the United States.

Sec. 3.

All persons are by nature free, and equally entitled to certain natural rights; among which are, those of enjoying and defending their lives and liberties, of acquiring, possessing, and protecting property, and seeking and obtaining happiness. To secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

Sec. 4.

All persons have a natural and indefensable right to worship God according to the dictates of their consciences. No person shall be compelled to attend, erect, or support any place of worship against his consent and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office; nor shall any person be incompetent to be a witness on account of his opinions on matters of religion; but nothing herein shall be construed to dispense with oaths or affirmations; but by the liberty of conscience hereby secured shall not be construed so

as to excuse acts of licentiousness or practices inconsistent with the peace or safety of the state.

Sec. 5.

No person shall be deprived of life, liberty or property, without due process of law, or be denied the equal protection of the law.

Sec. 6.

No person on account of law, shall be disqualified to enter upon and pursue any of the lawful business associations or professions of life.

Sec. 7.

Every person may freely speak write and publish his opinions on all subjects being responsible for the abuse of that liberty; and no laws shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions for libel, the truth may be given in evidence to the jury, and if it appears that the matter charged a libelous be true, and was published with good motives and justifiable ends, the party accused shall be acquitted; and the jury shall have the right to determine the law and the fact.

*Article XVI Amendments*

Sec. 1.

Any amendment or amendments to the constitution may be proposed in either branch of the legislature; and if the same shall be agreed to by two-thirds of the members elected to each of the houses, such proposed amendment or amendments shall be entered in their journals, with the ayes and noes thereon, and be submitted to the qualified electors of the state for their approval, at the next general election; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors voting thereon, the same shall become part of this constitution, and proclamation

thereof shall be made by the governor, provided, that, if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately. The legislature shall also cause the amendments that are to be submitted to the people, be published in some weekly newspaper, in every county where such newspaper is published, throughout the state.

Sec. 2.

Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to call a convention, to revise or amend this constitution, they shall recommend to the electors to vote at the next general election, for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall, at the next session, provide by law for calling the same; and such convention shall consist of a number of members, not less than that of the most numerous branch of the legislature.

Sec. 3.

Any constitution adopted by such convention shall have no validity until it has been submitted to, and adopted by the people.

## APPENDIX C

Relevant portions of the 1889 Washington State Constitution

### ARTICLE I

### DECLARATION OF RIGHTS

SECTION 1 POLITICAL POWER.

All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 2 SUPREME LAW OF THE LAND.

The Constitution of the United States is the supreme law of the land.

SECTION 3 PERSONAL RIGHTS.

No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 11 RELIGIOUS FREEDOM.

Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be in-

competent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [AMENDMENT 88, 1993 House Joint Resolution No. 4200, p 3062. Approved November 2, 1993.]

Original text—Art. 1 Section 11 RELIGIOUS FREEDOM—Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person, or property, on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office, or employment, nor shall any person be incompetent as a witness, or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

SECTION 29 CONSTITUTION MANDATORY.

The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

SECTION 32 FUNDAMENTAL PRINCIPLES.

A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

## ARTICLE XI

## COUNTY, CITY, AND TOWNSHIP ORGANIZATION

SECTION 3 NEW COUNTIES.

No new counties shall be established which shall reduce any county to a population less than four thousand (4,000), nor

shall a new county be formed containing a less population than two thousand (2,000). There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition therefore and then only under such other conditions as may be prescribed by a general law applicable to the whole state. Every county which shall be enlarged or created from territory taken from any other county or counties shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken: Provided, That in such accounting neither county shall be charged with any debt or liability then existing incurred in the purchase of any county property, or in the purchase or construction of any county buildings then in use, or under construction, which shall fall within and be retained by the county: Provided further, That this shall not be construed to affect the rights of creditors.

SECTION 4 COUNTY GOVERNMENT AND TOWNSHIP ORGANIZATION.

The legislature shall establish a system of county government, which shall be uniform throughout the state except as hereinafter provided . . .

Original text—Art. 11 Section 4 COUNTY GOVERNMENT AND TOWNSHIP ORGANIZATION—The legislature shall establish a system of county government which shall be uniform throughout the state, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county voting at a general election shall so determine, and whenever a county shall adopt township organization the assessment and collection of the revenue shall be made and the business of such county, and the local affairs of the several townships therein shall be managed and transacted in the manner prescribed by such general laws.

## APPENDIX D

International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

*entry* into *force* 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

## PART I

*Article 1*

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## PART II

*Article 2*

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions

of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

   (c) To ensure that the competent authorities shall enforce such remedies when granted.

*Article 3*

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

*Article 4*

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

*Article 14*

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

   (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

   (c) To be tried without undue delay;

   (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

   (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

   (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

   (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

*Article 16*

Everyone shall have the right to recognition everywhere as a person before the law.

*Article 17*

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

*Article 18*

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others

and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

*Article 19*

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others;

   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

*Article 25*

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

*Article 50*

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Entry into force: 23 March 1976, in accordance with article 49 , for all provisions except those of article 41; 28 March 1979 for the provisions of article 41 (Human Rights Committee), in accordance with paragraph 2 of the said article 41.

Registration: 23 March 1976, No. 14668.

Status: Signatories: 67, Parties: 154.

Text: United Nations, *Treaty Series* , vol. 999, p. 171 and vol. 1057, p. 407 (procès-verbal of rectification of the authentic Spanish text); depositary notification C.N.782. 2001. TREATIES-6 of 5 October 2001 [Proposal of correction to the original of the Covenant (Chinese authentic text)] and C.N.8.2002.TREATEIS-1 of 3 January 2002 [Rectification of the original of the Covenant (Chinese authentic text)].

Note: The Covenant was opened for signature at New York on 19 December 1966.

United States of America 5 Oct 1977 8 Jun 1992

## APPENDIX E

International Convention on Civil and Political Rights
New York, 16 December 1966

Relevant Portions of Declarations and Reservations

* * * *

"(5) That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant."

Declarations:

"(1) That the United States declares that the provisions of articles 1 through 27 of the Covenant are not self-executing.

"(2) That it is the view of the United States that States Party to the Covenant should wherever possible refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant, even when such restrictions and limitations are permissible under the terms of the Covenant. For the United States, article 5, paragraph 2, which provides that fundamental human rights existing in any State Party may not be diminished on the pretext that the Covenant recognizes them to a lesser extent, has particular relevance to article 19, paragraph 3 which would permit certain restrictions on the freedom of expression. The United States declares that it will continue to adhere to the requirements and constraints of its Constitution in respect to all such restrictions and limitations.

**APPENDIX F**

115 Wn. App. 229, *Satterlee v. Snohomish Co*unty

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THOM SATTERLEE, *et al.*,
*Appellants*,

v.

SNOHOMISH COUNTY, *et al.*,
*Respondents*.

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No. 50883-1-I. Division One.
December 30, 2002

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Michael T. Schein(of Reed, Longyear, Malnati & Ahrens), for appellants.

James H. Krider, Prosecuting Attorney, and Gordon W. Sively, Deputy, and Christine O. Gregoire, Attorney General, and Jeffrey T. Even, Assistant, for respondents.

[As amended by order of the Court of Appeals January 27, 2003.]

SCHINDLER, J.—This is an appeal of the summary judgment dismissal of a lawsuit to compel the State and Snohomish County to recognize Freedom County. The Washington Supreme Court in *Cedar County Committee v. Munro*[1] held that the creation of a county is a matter within the discretion of the legislature and not something the legislature is under a mandatory duty to do upon presentation of petitions of the requisite number of voters of the proposed new county. Accordingly, based on this binding precedent, we affirm the trial court's summary judgment dismissal of this action because creation of a county is a discretionary act on the part of the

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[1] 134 Wn.2d 377, 950 P.2d 446 (1998).

legislature, and the appellants are not entitled to an order compelling the legislature to do so.

FACTS

In July 2001, the appellants, Thom Satterlee, David Peter Guadalupe, and Donna Poeschel, individually and in their capacities as "Interim Commissioners of Freedom County," filed a complaint for declaratory judgment and damages in Skagit County Superior Court against Snohomish County and the State. The complaint alleged that in April 1995, over 12,000 Snohomish County residents signed petitions for the creation of Freedom County, located in an area currently within the boundaries of Snohomish County. The appellants argued that the new county came into existence when the petitions were delivered to the secretary of state on April 23, 1995. Neither the State nor Snohomish County has formally recognized or created Freedom County. The complaint sought damages and the issuance of "mandatory writs" compelling the State and the county to recognize Freedom County and to assist and participate in the transfer of authority, property, and other functions of government from Snohomish County to Freedom County.

A few years earlier, Satterlee and Guadalupe filed a nearly identical complaint in Snohomish County Superior Court seeking creation and recognition of Freedom County. The plaintiff in that lawsuit was Freedom County, by and through its commissioners, Satterlee and Guadalupe. The trial court found that because the legislature had not established Freedom County, it did not exist as a legal entity and it could not properly pursue the action. Accordingly, the court dismissed that lawsuit. This court affirmed the dismissal, holding that Freedom County is not a lawfully established county of the State.[2]

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[2] *Freedom County v. Snohomish County*, 95 Wn. App. 839, 977 P.2d 612 (1999), review denied, 139 Wn.2d 1022 (2000).

In the present case, both sides filed motions for summary judgment. The trial court granted summary judgment in favor of the State and Snohomish County and dismissed the appellants' action with prejudice. The court found: "Freedom County does not exist as a lawful political subdivision of the state of Washington and . . . neither the state of Washington nor Snohomish County is required to create or recognize the creation of such a county."[3]

The appellants sought direct review in the Supreme Court. They asked the court to reconsider its decision in Cedar County based on the argument that the constitutional authority to create a county is concurrent with the legislature and the people of the state of Washington, not exclusive with the legislature. The Supreme Court denied direct review and transferred the case to this court.

DISCUSSION

When reviewing an order of summary judgment brought under CR 56, we engage in the same inquiry as the trial court and consider the facts and all reasonable inferences from those facts in the light most favorable to the nonmoving party.[4] Summary judgment is appropriate if the pleadings, affidavits, depositions, and admissions on file show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.[5]

The appellants argue that the legislature has a duty under article XI, section 3 of the Washington Constitution to officially create and recognize a new county upon submission to the State of petitions signed by the requisite number of voters.

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[3] Clerk's Papers (CP) at 180. The court denied the respondents' motions for sanctions under CR 11 and RCW 4.84.185.

[4] *Right-Price Recreation, L.L.C. v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 381, 46 P.3d 789 (2002).

[5] CR 56(c).

Two cases—*Freedom County v. Snohomish County*[6] and the case upon which that decision was based, *Cedar County*[7]—hold to the contrary. Cedar County is an opinion of our Supreme Court and is therefore binding precedent on this court. Based on this precedent, we must likewise reject the appellants' argument and hold that the appellants are not entitled to an order compelling the State and the county to create and recognize Freedom County.

The constitutional provision governing new counties provides in part:

> No new counties shall be established which shall reduce any county to a population less than four thousand (4,000), nor shall a new county be formed containing a less population than two thousand (2,000). There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition therefor and then only under such other conditions as may be prescribed by a general law applicable to the whole state.[8]

In Cedar County, the Cedar County Committee submitted petitions to the legislature to create a new county in existing King County. They sought a writ of mandamus to compel the secretary of state to certify the petitions as an election. The Supreme Court held that the secretary of state did not have a duty to perform any function with respect to the formation of a new county. After reaching this decision, the court stated that, while it was not compelled to do so, it took the opportunity "to affirm the continuing vitality of this court's early holdings regarding the Legislature's discretion in the context of county formation."[9] In *Farquharson v. Yeargin*, one of the

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[6] 95 Wn. App. 839, 977 P.2d 612 (1999).

[7] 134 Wn.2d 377.

[8] WASH. CONST., art. XI, § 3.

[9] *Cedar County*, 134 Wn.2d at 382.

early cases the court in Cedar County referenced, the court held that article XI, section 3 of the constitution prohibits the legislature from exercising its discretion to create a new county unless specified requirements are met, but it does not impose a ministerial duty on the legislature to create a county or provide citizens the right to form a county. Rather, "The creation of a new county is an exercise of legislative power."[10] In *State ex rel. Chehalis County v. Superior Court*, another case the court in Cedar County referenced, the court held that article XI, section 3 is "a limitation upon the power of the legislature to create a county."[11] In the third case referenced, *Douglas County v. Grant County*, the court held that "the division of counties . . . is solely a legislative function . . . ."[12] Based on these early cases, the court in *Cedar County* concluded:

> The decisions of this court reflect an implicit understanding that the state constitution provides the Legislature with a framework rather than a mandate for county creation. Subject to the limitations of article XI, section 3, the discretion and power to create—or decline to create—a new county resides in the Legislature alone.[13]

In *Freedom County*, this court, citing *Cedar County*, stated that article XI, section 3 does not impose a ministerial duty on the legislature to enact legislation creating a new county even if the legislature is presented with petitions containing a sufficient number of signatures. Because the legislature did not have a duty to create Freedom County upon presentation

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[10] *Farquharson v. Yeargin*, 24 Wash. 549, 553, 64 P. 717 (1901) (quoted in Cedar County, 134 Wn.2d at 386).

[11] *State ex rel. Chehalis County v. Superior Court*, 47 Wash. 453, 462, 92 P. 345 (1907) (quoted in *Cedar County*, 134 Wn.2d at 386).

[12] *Douglas County v. Grant County*, 72 Wash. 324, 332, 130 P. 366 (1913) (quoted in Cedar County, 134 Wn.2d at 386).

[13] *Cedar County*, 134 Wn.2d at 387.

of the petitions, and because it did not create the county, the court held that Freedom County is not a lawfully established county and was therefore unable to maintain the lawsuit.

*Farquharson*, *Chehalis County*, *Douglas County*, *Cedar County* and *Freedom County* hold that the creation of a county is a matter within the legislature's discretion, subject to constitutional limitations. The first four of these cases are opinions of the Supreme Court, which we are bound to follow. The appellants argue, however, that we are not bound by *Cedar County* because the court's statements regarding the legislature's discretion and power to create, or to decline to create, a new county are mere dicta. While it is true that the court in *Cedar County* decided the case on the ground that the secretary of state had no duty to certify Cedar County's petition as an election and that the court's discussion about the legislature's discretion is technically dicta, the court's discussion was not a new pronouncement of the law. Rather, the court in *Cedar County* clearly stated that it was reaffirming the "continuing vitality" of earlier cases holding that the creation of new counties is a matter within the legislature's discretion.[14] Even if the discussion in *Cedar County* is dicta, it is not dicta in the earlier cases discussed in *Cedar County*. Under these cases, the summary judgment dismissal of the appellants' action was appropriate.

The appellants also argue that we should disregard the holdings of *Farquharson*, *Chehalis County*, *Douglas County*, and *Cedar County* because of additional contemporaneous history, namely, a newspaper editorial appearing in the supplement to the reprinted journal of the Constitutional Convention of 1889. This supplement was released just after the Supreme Court issued its opinion in Cedar County. It contains articles from various newspapers referenced in the journal's analytical index. For example, the appellants cite the July 26,

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[14] *Id.* at 382.

1889, editorial appearing in The Seattle Times that criticizes article XI, section 3, characterizing it as allowing secession.[15] Even if, however, as the appellants argue, the newspaper articles show that the intent of the framers was contrary to the holdings of the *Farquharson-Cedar County* line of cases, we nevertheless remain bound by these cases.

In reply to the State's and the county's argument that the petitions for the formation of Freedom County did not contain the requisite number of signatures, the appellants contend that the term "majority of the voters," as used in the second sentence of article XI, section 3, means a majority of the votes who voted in the preceding general election, not a majority of the voters living in the territory of the proposed county.

The court in *Cedar County* rejected this identical argument, stating:

> [T]he plain language of the constitution specifies that the petition must bear the signatures of a majority of the voters living in the territory, rather than merely a majority of the number who exercised their franchise at the most recent opportunity.
>
> * * * *

It would be absurd in these days of statewide voter registration to bind the question of county formation to the votes cast for or against a candidate or issue on the ballot in a previous, unrelated election.[16]

Based on *Cedar County*, we reject the appellants' argument.

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[15] The editorial points to a recent border dispute between King and Pierce Counties as the likely motivation behind the provision. It also suggests that the provision may be linked to a plan by the Northern Pacific Railroad to lessen taxes on its operation in that area, given its greater influence over Pierce County politics.

[16] *Cedar County*, 134 Wn.2d at 383, 385.

We affirm the summary judgment entered in favor of the State and the county.[17]

The county seeks an award of attorney fees under RAP 18.9. The county argues that because there is established case law, including a case involving virtually the same parties, the appellants' appeal is frivolous.

An appeal is frivolous "'if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there [is] no reasonable possibility of reversal.'"[18] In determining whether an appeal is frivolous, the court considers, in addition to the foregoing definition of "frivolous appeal," the following principles: RAP 2.2 gives a civil appellant the right to appeal, all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant, the record should be considered as a whole, and an appeal that is affirmed simply because the court rejects the arguments is not frivolous.[19]

We deny the county's request for an award of attorney fees under RAP 18.9. The appellants sought review by the Supreme Court based on arguments and information not raised or considered before. The appeal is not frivolous.

We affirm the summary judgment entered in favor of the State and the county and deny the county's request for an award of attorney fees pursuant to RAP 18.9.

ELLINGTON and APPELWICK, JJ., concur. Reconsideration denied January 27, 2003.

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[17] Because we affirm the summary judgment on the basis of binding Supreme Court precedent, we need not and do not address the State's and the county's argument that the appellants are collaterally estopped from raising the issue presented in this appeal.

[18] *State v. Chapman*, 140 Wn.2d 436, 454, 998 P.2d 282 (2000) (quoting *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 905, 969 P.2d 64 (1998)), cert. denied, 531 U.S. 984 (2000).

[19] *In re Marriage of Wagner*, 111 Wn. App. 9, 18, 44 P.3d 860 (2002).

**APPENDIX G**

95 Wn. App. 839,
FREEDOM COUNTY v. SNOHOMISH COUNTY

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FREEDOM COUNTY,

*Appellant*,

v.

SNOHOMISH COUNTY,

*Respondent*.

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No. 42637-1-1. Division One.
April 19, 1999

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[1] Counties—Formation—New Counties—Petition—Effect on Legislature. CONST. art. XI, § 3 does not compel the Legislature to create a new county upon the submission of a petition containing the requisite number of qualifying signatures.

[2] Counties—Formation—New Counties—Legislative Function. Subject to the prerequisites Of CONST. art. XI, § 3, the Legislature alone possesses the discretion and power to create a new county.

Nature of Action: The promoters of an effort to form a new county out of an existing county brought suit against the existing county and filed various motions and a notice of lis pendens in the name of the proposed new county.

Superior Court: The Superior Court for Snohomish County, No. 97-2-08587-8, Ronald L. Castleberry, J., on November 25, 1997, entered a judgment dismissing the case, striking the motions, and voiding the notice of lis pendens.

Court of Appeals: Holding that the proposed county was not a lawfully created county and that no action could be main-

tained in the name of the proposed county, the court affirms the judgment.

David Guadalupe, for appellants.

James H. Krider, Prosecuting Attorney, and Gordon Sivley, Deputy, for respondent.

APPELWICK, J.—Appellants' seek recognition of Freedom County based on petitions delivered to the Secretary of State. Holding that a county may not be created by petition, we affirm the trial court.

FACTS

The Appellants, Thom Satterlee and David Peter Guadalupe, purport to represent "Freedom County," a proposed county to be formed from a portion of Snohomish County. Proponents of Freedom County claim that 12,679 Snohomish County residents signed petitions for the purpose of creating the new county. The Appellants have continually argued that Freedom County came into legal existence on April 23, 1995, when the petitions were delivered to the Secretary of State.

Neither Snohomish County nor the Washington State Legislature has formally recognized or in any way created a new political subdivision called Freedom County. Nonetheless, Appellants argue that they have the right to withdraw their consent to be governed by Snohomish County, and to mandate the creation of a new county.

Appellants filed various motions and requests for relief, and a notice of lis pendens in the name of Freedom County. In response, Snohomish County filed a Motion to Dismiss under CR 12(b)(6). All motions were set for a hearing on November 25, 1997, before Superior Court Judge Castleberry.

Judge Castleberry found that the State Legislature had passed no legislation establishing the new county and that without such legislation Freedom County did not exist as a legal entity. Because the named plaintiff was deemed incapable of

maintaining the actions before the court, Judge Castleberry dismissed the case, struck various motions and requests for relief, and voided a notice of lis pendens filed in the name of Freedom County.

ANALYSIS

The Appellants assert numerous errors by the trial court that this court need not consider, as their claims were properly dismissed below on the basis that no action may be maintained in the name of "Freedom County."

[1, 2] In *Cedar County Committee v. Munro*, 134 Wn.2d 377, 950 P.2d 446 (1998), the proponents of Cedar County sought to compel the Secretary of State to certify their petitions as an "election" for the formation of a new county. The Washington State Supreme Court held that the Secretary of State had no role in the formation of new counties, much less a duty to certify the sufficiency of the petitions. *Cedar County*, 134 Wn.2d at 381.

Furthermore, in the *Cedar County* opinion, the Court stated that Article XI, § 3, of the Washington State Constitution does not impose a ministerial duty upon the Legislature to pass legislation creating a new county even if it is presented with a petition containing sufficient signatures. *Cedar County*, 134 Wn.2d at 385. Neither does the Constitution provide a right of citizens to form a new county. *Cedar County*, 134 Wn.2d at 385. Finally, the Court concluded,

. . . [T]he state constitution provides the Legislature with a framework rather than a mandate for county creation. Subject to the limitations of article XI, section 3, the discretion and power to create-or decline to create—a new county resides in the Legislature alone.

*Cedar County*, 134 Wn.2d at 387.

In the instant case, the trial court correctly concluded that (1) Freedom County is not a lawfully established county of

the State of Washington; (2) no action may be maintained in the name of Freedom County; and (3) this case presents no cause of action or any claim against Snohomish County for which relief may be granted. The trial court's dismissal of the claims brought in the name of Freedom County were therefore proper.

Affirmed.

COLEMAN and ELLINGTON, JJ., concur.

**APPENDIX H**

THE SUPREME COURT OF WASHINGTON

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NO. 68304-2
C/A NO. 42637-1-I

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FREEDOM COUNTY, by and through Freedom County Commissioners DAVID PETER GUADALUPE and THOM SATTERLEE,

*Petitioners*,

v.

SNOHOMISH COUNTY, by and through its Chief Executive Officer, Snohomish County Executive BOB DREWEL,

*Respondents*.

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ORDER

This matter came before the Court on the January 6, 2000, En Banc conference. The Court considered the Petition for Review. A majority of the Court voted in favor of the following result:

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 7th day of January, 2000.

/s/ Richard P. Gay
RICHARD P. GAY
Chief Justice

**APPENDIX I**

THE SUPREME COURT OF THE
STATE OF WASHINGTON

---

No. 68304-2

---

FREEDOM COUNTY,

*Petitioners*,

v.

SNOHOMISH COUNTY,

*Appellants*.

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DISSENTING OPINION TO ORDER
(dated ____, 1999) Filed ____

SANDERS, J. (dissenting)—I dissent from the Order Denying Review of January ___,1999, filed in this case as it turns away review of legitimate constitutional claim prematurely truncated by a trial court and intermediate appellate court That confused mere dicta with a prior holding of this court.

This is a petition for review from a Court of Appeals decision affirming a CR12(b)(6) dismissal of petitioner's action to judicially confirm

> Freedom County v. Snohomish County
> No. 68304-2

the creation of "Freedom County." The Court of Appeals opinion is premised upon dicta in *Cedar County Committee v. Ralph Munro*, 134 Wn.2d 377, 950 P.2d 445 (1998), which essentially states a county may only be created through legislative action. That this Language is dicta is unquestionably true as the majority itself states "while not compelled by our holding to do, we nevertheless to take this opportunity to

address the committees remaining claims . . . ." *Id.* at 382. Justice Alexander's concurring opinion states

> I agree with the majority when it concludes that mandamus does not properly lie against the Secretary of State on the basis that he is under no duty under our state's constitution or any statute to perform the duty the petitioners seek to compel him to perform. Because that holding entirely resolves the issue before this court, I take exception to the majority's extensive foray into an issue that is not before us, which, it concedes, it is not "compelled" to resolve.

*Id.* at 387. Justice Alexander goes on to observe: "[I]t is improper for us to render an opinion about what discretion or role the legislature does or does not have in the area of county formation when that issue is not before us. If and when the issue is properly raised, joined and briefed, we can resolve the question . . ." *Id.* This is such a case

Freedom County v. Snohomish County

No. 68304-2

Article 11, section 3 provides in part:

> There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition therefor and then only under such other conditions as may be prescribed by a general law applicable to the whole state. . .

Currently there is no general law on the subject, therefore, arguably, the right of citizens to form a county by petition is not so qualified. There is no express constitutional requirement that legislative action is the sole means by which a county may be created.

Since the petitioners here found their case dismissed out from under them pursuant to 12(b)(6) ("Failure to state a claim upon which relief can be granted"), the applicable rule

is that all facts and inferences which could conceivably be proved to support their claim must be assumed to exist for the purpose of ruling on the motion. *Reid Pierce County*, 136 Wn.2d 195, 200-01, 961 P.2d 333 (1998). Therefore we must assume for the purpose of review that the requisite number of signatures have been obtained in the designated geographic area to justify creation of the county. The Court of Appeals affirmed the dismissal, however, based upon its assumption that only legislative



> action could require the formation of a county—a proposition supported by dicta in the Cedar County case, however, questionable under the plain language of the state constitution.

I therefore believe a significant question under the constitution of the State of Washington has been presented and that review is appropriate under RAP 13.4(b)(3) ("If a significant question of law under the Constitution of the State of Washington or the United States is involved."). Although the hyperbolic rhetoric of the petitioners does not particularly aid their cause, and may be offensive to some, neither it nor a ruling premised on mere dicta should block review of their claim. I would have accepted review and invited interested entities and individuals to submit amicus briefs to further enlighten the court. Therefore I dissent.

/s/ J. Sanders
J. Sanders

## APPENDIX J

[No. 64958-8. En Banc.]

Argued October 14, 1997. Decided February 5, 1998.

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CEDAR COUNTY COMMITTEE, *et al.*,
*Petitioners*,

v.

RALPH MUNRO,
*Respondent.*

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[1] Mandamus—Public Official or Body—Duty To Act. A writ of mandamus may be granted to compel a government official to perform a specific act only if the official has a nondiscretionary legal duty to perform the act.

[2] Counties—Formation—New Counties—Secretary of State's Duty. The Secretary of State does not have any legal role or duty with respect to the formation of new counties.

[3] Elections—What Constitutes—Factors. An election is characterized by a secret ballot, the ability to vote for or against an issue, and the tabulation of votes on a specific day set aside for voting.

[4] Elections—What Constitutes—Petition. The gathering of signatures on a petition does not constitute an election.

[5] Constitutional Law—Construction—Plain Language—In General. In general, the constitution is construed according to its plain language. [Dictum.]

[6] Counties—Formation—New Counties—Petition—Majority of Voters—What Constitutes. Under CONST. art. XI, § 3, a new county may not be formed out of an existing county unless a majority of the voters living within the boundaries of the proposed new county have petitioned in its favor. A petition by a majority of voters living within the boundaries

of a proposed new county who voted in the last general election will not suffice. [Dictum.]

[7] Elections—Voter—What Constitutes—Registration—Contrasted With Elector. A "voter" is a person who has become eligible to vote by reason of registration. A "legal voter" is a person who is registered to vote in a precinct requiring voter registration. An "elector" is a person who satisfies the legal qualifications to vote (e.g., age and citizenship). [Dictum.]

[8] Counties—Formation - New Counties—Petition—Effect on Legislature. CONST. art. XI, § 3 does not compel the creation of a new county upon the submission of a petition containing the requisite number of qualifying signatures. The constitutional provision merely establishes the conditions which must exist before the Legislature may, in its discretion, create a new county (i.e., the provision is a restriction on the Legislature, not a grant of power). [Dictum.]

[9] Constitutional Law—State Constitution—Nature—

> Legislative Powers. The state constitution is a restriction on the Legislature's power to enact legislation, not a grant of legislative power. Unless limited by the constitution or federal law, the Legislature's power is plenary. [Dictum.]

[10] Constitutional Law—Separation of Powers—Judicial Encroachment—Legislature. A court may not compel the Legislature to enact legislation unless the legislation is mandated by the constitution. [Dictum.]

[11] Counties—Formation—New Counties—Legislative Function. Subject to the prerequisites of CONST. art. XI, § 3, the discretion and power to create a new county resides in the Legislature alone. [Dictum.]

ALEXANDER, J., DURHAM, C.J., and SANDERS, J., concur by separate opinion.

Nature of Action: The promoters and several supporters of an effort to form a new county out of an existing county sought a writ of mandamus to compel the Secretary of State to certify that a petition calling for the county's creation was an "election."

Supreme Court: Holding that the Secretary of State does not have an enforceable legal duty with respect to the formation of counties, the court denies the writ.

Rhys A. Sterling, for petitioners.

Christine O. Gregoire, Attorney General, and Jeffrey T. Even, Assistant, for respondent.

DOLLIVER, J.—Petitioners in this case include the Cedar County Committee and seven individuals (collectively, the Committee), all of whom have participated in a petition drive seeking to create a new county. They commenced this case as an original action in the Washington Supreme

Court, seeking a writ of mandamus directed to Secretary of State Ralph Munro (the Secretary).

The Committee submitted petitions, pursuant to article XI, section 3, of the Washington Constitution, to the State Legislature to create a new county within Washington state. The petitions advocate the creation of Cedar County in existing King County.

Between February 28 and November 4, 1996, Petitioner Lots Gustafson submitted to the Legislature signed petition sheets proposing the creation of Cedar County. The Chief Clerk of the House and the Secretary of the Senate transmitted the petitions to the Secretary of State with the request that he examine the signatures on each of the petitions and report the results of those examinations to the Legislature. Although there are no implementing statutes governing the petition process for the formation of new counties referred to in the state constitution or providing for the verification of the

signatures on the formation petitions for new counties (by either state or local election officials), the Secretary agreed, with the assistance of local election officials in the areas where the new counties were proposed, to compare the signatures on the formation petitions to the voter registration records of those counties.

The Secretary arranged for the Division of Records and Elections in King County to compare the signatures on the Cedar County petitions to the voter registration records of King County and report the results. The Division of Records and Elections determined that there were 97,226 registered voters in the area of the proposed county at the time the petitions were submitted. Of those voters, a total of 23,765 signed the petitions submitted by the Committee.

The proponents of the new county claim a petition for a new county is sufficient if the number of valid signatures of registered voters who reside in the proposed county exceeds 50 percent of the number of votes cast in that territory at the last state general election, as opposed to 50 percent of the registered voters residing in the area of the proposed county. The Secretary therefore informed the Legislature that, at the previous general election, 45,033 votes were cast within the proposed Cedar County boundaries.

The Secretary, together with the Chief Clerk of the House, the Secretary of the Senate, and representatives of the presiding officers of the House and Senate, reached a consensus that the Secretary has no legal authority to determine the sufficiency of formation petitions for new counties. His actions in comparing the signatures on the petitions to voter registration records were designed to provide information in order that the Legislature might make a determination about the sufficiency of those petitions.

The Legislature did not act on either the report or the petitions, and the Committee petitioned this court for a writ of

mandamus directed to the Secretary. Specifically, the Committee seeks a writ compelling the Secretary to perform his "duty" and certify its petitions as an "election." Its argument is this: Having satisfied the state constitutional prerequisites to new county formation, the Committee is entitled to have the Secretary certify its petitions—the "duty" this court should compel the Secretary to perform—which in turn will require the Legislature to create Cedar County.

We disagree. The Secretary of State has no duty to certify the Committee's petitions as an election. Moreover, the creation of a new county is an exercise of legislative power subject only to state constitutional limitations; the Legislature cannot be compelled to form a new county. Finally, the Committee has not submitted the signatures of a majority of the voters living in proposed Cedar County.

[1] Because the Committee seeks a writ of mandamus directed to the Secretary, we turn first to the question of the Secretary's duty. A writ of mandamus is appropriate only where a state officer has a duty to act. *State ex rel. Burlington N., Inc. v. Washington Utils. & Transp. Comm'n*, 93 Wn.2d 398, 410, 609 P.2d 1375 (1980). The duty to act must be imposed expressly by law, and involve no discretion. *State ex rel. Clark v. City of Seattle*, 137 Wash. 455, 461, 242 P. 966, 46 A.L.R. 253 (1926). The Committee must therefore show the Secretary is compelled by law to perform a specific act. *Walker v. Munro*, 124 Wn.2d 402, 407, 879 P.2d 920 (1994). The Committee argues the Secretary has a duty to certify its petitions because they are an election, but cites no authority for this proposition.

The formation of new counties in this state is governed by article XI, section 3, of the Washington State Constitution, which provides:

No new counties shall be established which shall reduce any county to a population less than four thousand (4,000), nor

shall a new county be formed containing a less population than two thousand (2,000). There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition therefor and then only under such other conditions as may be prescribed by a general law applicable to the whole state. . . .

[2] The Secretary has never treated petitions for new counties as "special elections" or had any role, much less a duty, in forming new counties since adoption of the state constitution. Here, the petitions were submitted to the Legislature, not the Secretary, and, as an accommodation to the Legislature, the Secretary reported his findings. The Legislature appears to have expected only to receive a report, not the certification of the petitions as an election.

[3, 4] The Committee argues the petition process was identical to an election. However, the petition process shares none of the key attributes of an election, such as a secret ballot, the ability to vote for or against an issue rather than simply sign onto a single statement of opinion, or the "snapshot" nature of the electorate's expression of its views on election day, as opposed to the ongoing (in this case, four years long) collection of signatures on a petition.

Aside from the fact that a petition drive differs in significant ways from an election, no statute or Washington Administrative Code provision addresses special elections by petition or any role for the Secretary in connection with such petitions. Here, the Secretary merely provided factual information to the Legislature regarding the number of signatures on the Committee's petitions. The Secretary provided that service through an agreement with the Legislature. He was not, and is not, duty bound to perform any function in the proposed formation of a new county.

While not compelled by our holding to do so, we nevertheless take this opportunity to address the Committee's remaining

claims and to affirm the continuing vitality of this court's early holdings regarding the Legislature's discretion in the context of county formation.

In its petition for writ of mandamus, the Committee asks that this court compel the Secretary to "fulfill his duty" and certify the petition results as being constitutionally sufficient, and then to transmit his certification to the Legislature. The Committee's basic legal premise throughout this case has been that such a certification will constitutionally obligate the Legislature to enact whatever laws may be necessary to establish the new county and enable it to function.

The Committee's premise is flawed for two reasons. Initially, we are not persuaded the petitions are constitutionally sufficient. Again, CONST. art. XI, § 3, entitled "NEW COUNTIES." provides:

> No new counties shall be established which shall reduce any county to a population less than four thousand (4,000), nor shall a new county be formed containing a less population than two thousand (2,000). There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition therefor and then only under such other conditions as may be prescribed by a general law applicable to the whole state. . . .

[5, 6] Proposed Cedar County (and what would remain of King County) plainly meets the population criteria of the first sentence. Only the prerequisite of the second sentence is at issue. The area comprising the proposed Cedar County was home to 97,226 registered voters at the time the petitions were examined. Those petitions contained the signatures of 23,765 registered voters, less than one-fourth of the total. Assuming the petition requirement applies to new county formation, rather than only to annexation by an existing county of another county's territory, the petitions fall short of the requisite number of signatures.

The Committee contends the signatures meet the constitutional requirement if they number at least 50 percent, plus one, of the number of votes cast in the preceding general election. If the Committee were correct, then the petition signatures would suffice: 45,033 votes were cast in the proposed Cedar County boundaries at the general election preceding submission of the petitions, which contained over half that many signatures. However, the plain language of the constitution specifies that the petition must bear the signatures of a majority of the voters living in the territory, rather than merely a majority of the number who exercised their franchise at the most recent opportunity.

The Committee argues it is the framers' use of the term "voters" rather than "electors" living within the subject territory which constitutes the basis for sufficiency. For the importance of this distinction, the committee relies on an inapposite Florida case in which it was held:

> [A voter] is an elector who does vote, and in the present instance a voter is one who voted at the last November general election, and on the question in controversy is one who actually voted, either for or against the creation of the new county . . . . An elector is not a voter unless he votes, yet he still retains his qualifications as an elector."

*State ex rel. Thomas v. Williams*, 100 Fla. 996, 1003, 130 So. 428, 430 (1930) (quoting *State ex rel. McCue v. Blaisdell*, 18 N.D. 31, 36, 119 N.W 360 (1909)).

The Committee's reliance on the foregoing language is misplaced. The Florida court, in deciding a different question, was quoting directly from an opinion of the *North Dakota Supreme Court in State ex rel. McCue v. Blaisdell*, 18 N.D. 31, 119 N.W. 360 (1909) as authority for the definitions of "voter" and "elector." In the North Dakota case, the constitution provided that changes in the boundaries of counties

should not be effective until submitted to the electors of the county affected and approved by a majority of all the legal votes cast at a general election. The change proposed was submitted to the electors of the proposed county at a general election and approved by a slight majority of the votes cast on that proposition, but the approving votes were not more than half the total votes cast for the various candidates for public office. The court held that the change was approved because the question of the alteration of county boundaries was separate and distinct from the selection of officials. *Blaisdell*, 18 N.D. at 38-39. The North Dakota court distinguished "voter" from "elector" in order to determine the meaning of the phrase, "a majority of all the legal votes cast at a general election." *Blaisdell*, 18 N.D. at 36-37.

When the North Dakota court defined "voter" as one who voted in the last general November election, it was not referring, as is the Committee, to an unrelated general election which preceded the county formation question; it was referring to those who voted for or against the very creation of the new county. The Committee's reliance on these out-of-state cases is misplaced.

[7] One explanation of the framers' choice of the term "voters" rather than "electors" is that they wanted to distinguish registered voters, in those counties that had a voter registration system, from those who were qualified, but not registered, to vote. A "voter" is one who has become eligible to vote by reason of registration, while an "elector" is merely one who is qualified, by reasons, e.g., of age and citizenship, to vote. *Defilipis v. Russell*, 52 Wn.2d 745, 746-47, 328 P.2d 904 (1958).

The framers did, in fact, address the issue of voter registration in article VI, section 7, of the state constitution:

> The legislature shall enact a registration law, and shall require a compliance with such law before any elector

> shall be allowed to vote; Provided, that this provision is not compulsory upon the legislature except as to cities and towns having a population of over five hundred inhabitants. In all other cases the legislature may or may not require registration as a pre-requisite to the right to vote, and the same system of registration need not be adopted for both classes.

The phrase "legal voters" has been held to mean "registered voters" in those precincts where there was voter registration. *State ex rel. Mullen v. Howell*, 108 Wash. 340, 343, 184 P. 333 (1919). We also note the Committee's theory would allow a minority of those eligible to dictate to the vast majority who, in this case, did not sign a petition to form Cedar County. Voter turnout fluctuates and can be particularly low in odd-year elections. It would be absurd in these days of statewide voter registration to bind the question of county formation to the votes cast for or against a candidate or issue on the ballot in a previous, unrelated election.

[8, 9] Even presentation of a sufficiently signed petition would not impose upon the Legislature a duty to create the new county. The Committee's argument is based on the assumption that article XI, section 3, is a retention of power to the electorate and not a limitation on government. However, the provision does not state that a county shall be created if certain conditions are met; it mandates that no new counties can be created unless the conditions are met. The plain language of the constitution prohibits the Legislature from exercising its discretion to create a new county unless specified requirements are fulfilled. It does not mention a ministerial duty to create a county nor provide a right by citizens to form a county. As evidence of this, THE JOURNAL OF THE CONSTITUTIONAL CONVENTION points out that the provision "was not a grant of power, but merely a restriction on the Legislature." THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION, 1889 at 710 (Beverly

Paulik Rosenow ed., 1962). As this court has explained, "the state constitution is a limitation upon the power of the legislature rather than a grant thereof. Insofar as legislative power is not limited by the constitution it is unrestrained." *Moses Lake Sch. Dist. No. 161 v. Big Bend Community College*, 81 Wn.2d 551, 555, 503 P.2d 86 (1972), *appeal dismissed*, 412 U.S. 934 (1973).

[10] Whether the Legislature can be subject to a "ministerial duty" to enact a particular bill or law is questionable. This court has stated that it will not order the Legislature to enact a statute unless that enactment is specifically mandated by the constitution. *City of Ellensburg v. State*, 118 Wn.2d 709, 715, 826 P.2d 1081 (1992). The text of the state constitution contains no such mandate.

Washington cases addressing the creation of new counties have determined that the creation of a new county is "an exercise of legislative power." *Farquharson v. Yeargin*, 24 Wash. 549, 553, 64 P. 717 (1901). This court has explained the constitutional requirements for county formation are a prerequisite to the Legislature's exercise of discretion, stating, "[bJefore this power can be rightfully exercised, it must be made to appear to the legislature affirmatively that the new county" satisfies the requirements. *Id.*

Six years after *Farquharson v. Yeargin*, this court considered the validity of legislation which would have enabled the creation of a Chehalis County, and characterized article XI, section 3, as "a limitation upon the power of the legislature to create a county." *State ex rel. Chehalis County v. Superior Ct.*, 47 Wash. 453, 462, 92 P. 345 (1907). And in *Douglas County v. Grant County*, 72 Wash. 324, 332, 130 P. 366 (1913), this court noted simply that "the division of counties . . . is solely a legislative function[.]" See also *Peacock v. Public Disclosure Comm'n*, 84 Wn. App. 282, 289, 928 P.2d 427 (1996), *review denied*, 131 Wn.2d 1022 (1997).

[11] The decisions of this court reflect an implicit understanding that the state constitution provides the Legislature with a framework rather than a mandate for county creation. Subject to the limitations of article XI, section 3, the discretion and power to create—or decline to create—a new county resides in the Legislature alone.

SMITH, GUY, JOHNSON, MADSEN, and TALMADGE, JJ., concur.

ALEXANDER, J. (concurring)—I agree with the majority when it concludes that mandamus does not properly lie against the Secretary of State on the basis that he is under no duty under our state's constitution or any statute to perform the duty the petitioners seek to compel him to perform. Because that holding entirely resolves the issue before this court, I take exception to the majority's extensive foray into an issue that is not before us and which, it concedes, it is not "compelled" to resolve. Majority op. at 382.

The additional question the majority addresses is, in essence, whether the Legislature can be compelled to create a county. The petitioners have not sought to compel the Legislature to create a county or do anything else and, in my view, it is improper for us to render an opinion about what discretion or role the Legislature does or does not have in the area of county formation when that issue is not before us. If and when that issue is properly raised, joined, and briefed, we can resolve the question. In the meantime, we should exercise judicial discretion and avoid issuing what can only be described as an advisory opinion.

DURHAM, C.J., and SANDERS, J., concur with ALEXANDER, J. Reconsideration denied March 11, 1998.

**APPENDIX K**

THE SUPREME COURT OF WASHINGTON

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No. 75607-4

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In re the Personal Restraint Petition of THOM SATTERLEE,
*Petitioner.*

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RULING DENYING REVIEW

Thom Satterlee was convicted in district court of the unauthorized practice of law. The superior court affirmed the conviction on direct appeal, and this court denied discretionary review. No. 73 609-0. Mr. Satterlee subsequently filed a personal restraint petition in Division One of the Court of Appeals. Finding the petition clearly without merit, the Acting Chief Judge of the Court of Appeals dismissed it. Mr. Satterlee now seeks this court's discretionary review. RAP 16.14(c); RAP *13.5.*

Mr. Satterlee does not demonstrate that the Acting Chief Judge committed any error meriting this court's review. While his motion consists mainly of broad constitutional pronouncements unmoored from the facts of this case, he appears to assert three specific claims. First, he argues he was denied the right to present a meaningful defense. But he does not show that to be the case. Second, he urges the trial court never obtained personal jurisdiction over him because it did not properly arraign him.1 But the record shows that the only barrier to proper arraignment was Mr. Satterlee's obstinate insistence that he was not the named defendant but was only

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[1] The Acting Chief Judge did not address this issue. Mr. Satterlee appears to have raised it, if at all, in his reply to the State's response to his personal restraint petition.

the "communications agent" for the "copyrighted and registered trademark" named in the complaint.

Contrary to Mr. Satterlee's argument, *State v. Ryan*, 48 Wn.2d 304, 293 P.2d 399 (1956), did not hold that express entry of a not guilty plea is necessary to personal jurisdiction. The court there held only that when a defendant enters a not guilty plea and appears for trial, personal jurisdiction is not defeated by an invalid arrest. *Id.* at 304-05. If the defendant refuses to enter a plea, as appears to have been the case here, the trial court must enter a plea of not guilty for him. RCW 10.40.190. And when the defendant proceeds to trial without objection as though he pleaded not guilty, he waives the right to formal arraignment. *State v. Anderson*, 12 Wn. App. 171, 173, 528 P.2d 1003 (1974).

Finally, Mr. Satterlee argues the trial court asserted jurisdiction in violation of certain international treaties. But he does not explain how these treaties affected the court's jurisdiction.

The motion for discretionary review is denied.

/s/ [Illegible]
Commissioner

August 10, 2004

## APPENDIX L

THE SUPREME COURT OF WASHINGTON

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No. 75573.6
Snohomish County No. 03-2-09066-1

---

COREY MCCRAREY, a minor, by and through his mother LORRIE CANADA,
*Respondent*,

v.

CYNTHIA SAMS, a single woman;
ESTATE OF BENJAMIN C. SAMS;
THE LAVENDER MOON SOCIETY,
an unincorporated entity,
*Defendants*,

FLOYD TJMOTHY RYAN,
*Petitioner*.

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### ORDER

Department I of the Court, composed of Chief Justice Alexander and Justices Johnson, Sanders, Bridge and Owens, considered this matter at its November 3, 2004, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED;

That the Petitioner's Motion to Modify the Commissioner's Ruling is denied.

DATED at Olympia, Washington this 3rd day of November 2004.

For the Court

/s/ Gerry L. Alexander
Chief Justice

**APPENDIX M**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR SNOHOMISH COUNTY

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No. 03-2-090661-1

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COREY MCCRAREY, a minor, by and through his mother LORRIE CANADA,
*Plaintiff*

vs.

CYNTHIA SAMS, a single woman;
ESTATE OF BENJAMIN C. SAMS;
THE LAVENDER MOON SOCIETY, an unincorporated entity;
*Defendants.*

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MEMORANDUM DECISION DENYING MOTION TO RECONSIDER ORDER STRIKING PLEADINGS

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## I. PROCEDURE

Floyd Timothy, Ryan Nazirite Elder of Truth over and for Lavender Moon Society brings this motion requesting that the Court reconsider a previous order. In that order, the Court ordered stricken various pleadings filed on behalf of Lavender Moon Society and signed by Floyd Timothy, Ryan. The basis for the Court's ruling was that Lavender Moon Society is not a natural person, Floyd Timothy, Ryan is not a member of the Washington State Bar Association or an attorney at law licensed to practice law in Washington and, therefore, Floyd Timothy, Ryan may not appear for Lavender Moon Society

nor seek to have Lavender Moon Society appear pro se through him.

## II. SUMMARY OF THE COURT'S RULING

In this decision, the Court makes the following rulings:

1. An organization including a religious organization established as a corporation sole, cannot appear pro se in Washington courts.

2. Requiring corporations sole to appear in court through an attorney does not violate the freedom of religion clauses of the state or federal constitutions, nor does it violate the United States Constitution's First Amendment freedom of association or freedom of speech clauses.

## III. ORDER

For the reasons set forth below, Floyd Timothy, Ryan's motion to reconsider is denied. The various pleadings signed by Floyd Timothy, Ryan as the representative of Lavender Moon Society remain stricken.

## IV. BASIS OF DECISION

A. Other than *natural persons*, entities appearing in Washington courts must do so through the appearance and representation of an attorney at law, licensed to practice law in Washington.

In general, only persons licensed by the Washington State Bar Association may represent the interests of others in superior court.[1] Washington courts recognize an exception for pro

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[1] "Ordinarily, only those persons who are licensed to practice law in this state may do so without liability *for* unauthorized practice." *Washington State Bar Ass 'n v. Great Western Union Federal Say. And Loan Ass 'n*, 91 Wn.2d 48, 56, 586 P.2d 870 (1978). RCW 2.48.170 (requiring membership in the state bar in order to practice law).

se litigants.[2] However, this exception is strictly construed, allowing laypersons to represent themselves in superior court only if they are acting solely on their own behalf.[3] In the case at hand, Floyd Timothy, Ryan desires to represent the Lavender Moon Society as a corporation sole. Since be is neither a licensed attorney nor a pro se litigant, he cannot file pleadings for or represent the interests of others in this action. CR 11.

Superior Court Civil Rule 11 requires that every pleading, motion, and legal memorandum must be signed by a member of the Washington State Bar Association or by a party who is appearing pro se. If these documents are not signed properly the Court shall strike them. CR 11. *In Lloyd Enterprises, Inc. v. Longview Plumbing & Heating Co., Inc.*, 91 Wn.App. 697, 701, 958 P.2d 1035 (1998), the Court of Appeals reviewed a trial court's decision for abuse of discretion when the trial court struck documents filed by Wade Berry ("Berry"), a non-lawyer, who claimed to represent a corporation. After striking the documents, the trial court gave Berry twenty days to file documents signed by a licensed attorney. *Lloyd Enters*, 91 Wn.App. at 700. When Berry failed to comply, the court entered default judgments in favor of the other party. The Court of Appeals held that this was proper:

> Because the case continued as originally filed, Berry, Inc., as a corporation, was required to comply with the rules regarding representation of corporations in court proceedings. Washington law, with limited exception, requires individuals appearing before the court on behalf of another party to be licensed in the practice of law. Because corporations are artificial entities that can only

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[2] "Certain it is that a defendant may appear pro Se, without an attorney. This may no longer be common, but it is just as effective." *Dloughy v. Dioughy*, 55 Wn.2d 718, 721, 349 P.2d 1073 (1960).

[3] "The 'pro se' exceptions are quite limited and apply only if the layperson is acting solely on his own behalf Wash7ngtofl State Bar Ass n 91 Wn 2d 48 at 57

> act through their agents, we agree with the general common law rule, recognized by courts in other jurisdictions, including all federal courts, that corporations appearing in court proceedings must be represented by an attorney.
>
> Because Berry, Inc., was required to be represented by an attorney, the trial court acted appropriately under Superior Court Civil Rule 11 when it struck those documents submitted by Berry on behalf of Berry, Inc.
>
> "Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. . . . If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant."

*Lloyd Enters*, 91 Wn.App. at 701-02. Similar to Berry, Floyd Timothy, Ryan is not licensed to practice law in Washington State and is not appearing pro se. Under CR 11, this Court properly struck the pleadings signed by Floyd Timothy, Ryan.

Non-attorneys may represent themselves in lawsuits, but have no authority to appear for others. *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987). Both corporations and unincorporated associations must appear in court through an attorney. *Church of/he New Testament v. United States*, 783 F.2d 771, 773 (9th Cir. 1986).[4] Even

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[4] Laypersons may not represent the interests of others nor may they represent an artificial entity, such as a corporation or association. The Court notes that in *Willapa Trading Co., Inc. v. Muscanta, Inc.*, 45 Wn.App. 779, 727 P.2d 687 (1986), the Washington State Court of Appeals held that a new trial was not required when a trial court did not prevent a non-attorney individual from representing himself and a corporation in which he was the only stockholder. Since only the appellant's

unincorporated associations,[5] partnerships,[6] and trusts[7] must be represented by attorneys at law.

Courts have adhered closely to the rule that corporations must appear in court through an attorney. *In Rowland v. California Men's Colony*, 506 U.S. 194, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993), the Supreme Court reiterated that "[i]t has been the law for the better part of two centuries, for example, that a corporation may appear in the federal courts only through licensed counsel. . . . As the courts have recognized, the rationale for that rule applies equally to all artificial entities." *Rowland*, 506 U.S. at 201-02. The Supreme Court continued that the federal courts have uniformly held that the law allows parties to "plead and conduct their own cases personally or by counsel," but that the law does not allow corporations, partnerships, or associations to appear in federal

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interests were at stake at trial, the court of appeals concluded that the litigant's appearance was invited error on his part and, thus, did not warrant relief on appeal. *Willapa* does not broaden the pro se exception. The Second Circuit, for instance, would not allow a non-attorney to appear pro se for a corporation, even though he was the sole stockholder and chief executive officer of the corporation. *Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20 (2nd Cir. 1983). This remains the universal rule.

[5] "Unincorporated associations, like corporations, must appear through an attorney. . . ." *Church of the New Testament v. United States*, 783 F.2d 771, 773 (9th Cit. 1986).

[6] "Corporations and partnerships, both of which are fictional legal persons, obviously cannot appear for themselves personally." *Turner v. American Bar Ass 'n*, 407 F.Supp. 451, 476 (N.D.Tex. 1975). "Corporations and partnerships, by their very nature, are unable to represent themselves and the consistent interpretation of [28 U.S.C.A. s. 1654] is that the only proper representative of a corporation or a partnership is a licensed attorney, not an unlicensed layman regardless of how close his association with the partnership or corporation." *Turner*, 407 F.Supp. at 476.

[7] *C.E. Pope Equity Trust*, 818 F.2d 696. *See also* RCW 11.98.070 (powers of the trustee).

court otherwise than through a licensed attorney.[8] *Rowland,* 506 U.S. at 202.

B. Corporations Sole cannot appear pro se.

Floyd Timothy, Ryan argues that he can appear in court as legal counsel representing the interests of others because he is the corporation sole for Lavender Moon Society. The Florida Supreme Court considered whether a corporation sole may engage in the practice of law in *Florida Bar v. Embassy of Heaven Church*, 25 Fla. L. Weekly S445, 761 So.2d 1053 (2000). This case is dispositive.

In Florida Bar, the Florida Supreme Court considered an appeal of an action filed by the Florida Bar Associa tion ("FBA") against the Embassy of Heaven Church (the "Church") and Richard A. Shirala ("Shirala"). The FBA claimed that Shirala improperly filed court documents on behalf of the Church in his capacity as pastor and "corporation sole" of the Church. *Florida Bar*, 761 So.2d at 1053-54. The FBA alleged that Shirala could no more represent the Church's interest in court as the corporation sole than an officer or director could represent a corporation's interests in court.[9] *Florida Bar*, 761 So.2d at 1054. The referee[10] entered

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[8] One of the cases labeled "aberrant" was a Ninth Circuit decision that allowed a non-attorney partner to represent his interest in a partnership pursuant to Alaskan partnership statute. *United States v. Reeves*, 431 F.2d 1187, 1188 (9th Cir. 1970). The Ninth Circuit later acknowledged that allowing a partner to represent his interest in a partnership was a misapplication of the law and reasserted that corporations and other non-incorporated associations, including partnerships, must appear in court only through an attorney. In re America West Airlines, 40 F.3d 1058, 1059 (9th Cit. 1994).

[9] *See also United States v. Stock*, 2002 WL 575775 (D.Idaho 2002) (holding that an individual could not represent a church's interests by claiming it was his right as corporation sole).

[10] Referees are similar to court commissioners.

as conclusions of law that Shirala and the Church had engaged in the unauthorized practice of law. *Florida Bar*, 761 So.2d at 1054. The referee found that the actions of Shirala and the Church "violate[d] the letter and spirit of this Court's decisions" in earlier unlicensed practice of law cases, and also "present[ed] the potential for substantial public harm." *Florida Bar*, 761 So.2d at 1054. On review, the Florida Supreme Court agreed with the referee that the conduct engaged in by Shirala and the Church constituted the unlicensed practice of the law. *Florida Bar*, 761 So.2d at 1054. In support of this holding, the Florida Supreme Court cited multiple cases holding that laymen cannot practice law and that corporations must be represented by licensed attorneys. *Florida Bar*, 761 So.2d at 1054-55.

This Court agrees with the holdings of the Florida Supreme Court in the *Florida Bar* case and the United States District Court in the *Stock* case. Floyd Timothy, Ryan cannot represent the legal interests of Lavender Moon Society in court by virtue of the corporation sole status.

C. The legislature did not give corporations sole the legal ability to appear pro se.

The *Florida Bar* case conclusively resolves the issues raised in the motion for reconsideration. However, this Court, in fairness, will address the entirety of the arguments Floyd Timothy, Ryan raises in his motion for reconsideration.

Floyd Timothy, Ryan seeks to represent the Lavender Moon Society by contending that the corporation sole statute confers upon him statutory powers to do so. However, no statutory powers or privileges granted by the Washington State Legislature include a recognition or grant of authority to non-attorneys allowing them to represent corporate bodies, religious or otherwise.

Under RCW 24.12 et seq., corporations sole are persons who are held to be religious bodies corporate having all of the rights and powers prescribed in the case of corporations aggregate and with privileges provided by law for religious corporations. RCW 24.12.010. However, the powers of corporations aggregate do not include pro se representation. RCW 23B.03.020 (general powers of corporations). Thus, RCW 24.12.010 does not support the position urged by Floyd Timothy, Ryan.

The powers of the corporation sole are set out in RCW 24.12.020. These powers are all held for the purpose of the trust created (not for the purposes of the person acting as the corporation sole). RCW 24.12.020. These powers are:

1. to "contract in the same manner and to the same extent as a natural person";
2. to "sue and be sued, and may defend in all courts and places";
3. to "borrow money and give promissory notes therefor, and to secure the payment of the same by mortgage or other lien upon property, real and personal";
4. to "buy, sell, lease, mortgage and in every way deal in real and personal property in the same manner as a natural person";
5. to "receive bequests and devises for its own use or upon trusts, to the same extent as natural persons;" and
6. to "appoint attorneys in fact."

RCW 24.12.020. This statutes does not purport to give corporations sole the power to sue or be sued or to defend "as a natural person." This grant of authority is plainly different from the grant of authority dealing with the conveyance of property, for instance. Moreover, the language dealing with the power to "sue or be sued" and "to defend" is the same

language used by the legislature in detailing the powers of corporations aggregate. RCW 23B.03.020(2)(a) (Business Corporation Act). The capacity of corporations to "sue and be sued" refers to their status as parties in litigation and has never been held to allow non-attoneys to represent corporations in court proceedings. Corporations have only such powers as the legislature grants to them). Washington courts, recognizing this and common law princi. *In re Borman's Estates*, 50 Wii.2d 791, 794, 314 P.2d 617 (1957ples, do not allow non-attorneys to represent corporations. "Because corporations are artificial entities that can only act through their agents, we agree with the general common law rule, recognized by courts in other jurisdictions including all federal courts, that corporations appearing in court proceedings must be represented by an attorney." *Lloyd Enterprises Inc. V. Longview Plumbing & Heating Co., Inc.*, 91 Wn.App. 697, 701, 958 P.2d 1035 (1998), citing *Rowland*, 506 U.S. at 202.

Corporations sole have the power to appoint *attorneys in fact*; however, this power should be distinguished from the appointment of *attorneys at law*. An *attorney in fact* is "[a] private attorney authorized by another to act in his place and stead, either for some particular purpose, as to do a particular act, or for the transaction of business in general, *not of a legal character*." *Black's Law Dictionary* 164 (4th ed. 1968) (emphasis added.). An *attorney at law* is "[a]n advocate, counsel, or official agent employed in preparing, managing, and trying cases in the courts. An *officer in a court of justice* who is employed by a party in a cause to manage it for him." *Black's Law Dictionary* 164 (4th ed. 1968) (emphasis added.).

The individual acting as the corporation sole is a trustee of the religious corporation. "All property held in such official capacity by such bishop, overseer or presiding elder, as the case may be, shall be in trust for the use, purpose, benefit and behoof of his religious denomination, society or church."

RCW 24.12.030. A trustee cannot represent pro se the collective interests of a trust. *C.E. Pope Equity v. United States*, 818 F.2d 696, 697 (9th Cir. 1987). In that case, the United States Court of Appeals concluded that a person named Stradley was not appearing in court to represent his own interests but, rather, as a trustee representing the interests of a trust. *C.E. Pope Equity Trust*, 818 F.2d at 697. "Although a non-attorney may appear in propria persona in his own behalf, that privilege is personal to him. He has no authority to appear as an attorney for others than himself." C.E. *Pope Equity Trust*, 818 F.2d at 697 (citations omitted.). Hence, Stradley was not allowed to represent the interests of the trust.

Additionally, even if the legislature passed a statute granting corporations sole the power to represent others in court (which has not been done), the statute would be ineffective because the Washington State Supreme Court has the authority to determine who may practice law. The legislature cannot encroach on the Supreme Court's authority. To do so would be a violation of the separation of powers doctrine. "Since the regulation of the practice of law is within the sole province of the judiciary, encroachment by the legislature may be held by this court to violate the separation of powers doctrine. The separation of powers doctrine is a fundamental principle of the American political system." *Bennion, Van Camp Hagen & Ruhl v. Kassler Escrow, Inc.*, 96 Wn.2d 443, 453, 635 P.2d 730 (1981). Under RCW 24.12 *et seq.*, the legislature could not and did not grant corpo-rations sole the right to practice law.

Corporations sole may sue and be sued as an entity and a party. This does not allow a non-lawyer to represent the interests of the trust in court.

D. Requiring Lavender Moon Society to appear through an attorney at law does not violate its members' rights to freedom of religion.

Floyd Timothy, Ryan argues that the state's interest in regulating the practice of law is not a compelling governmental interest sufficient to justify an infringement on the religious beliefs he and the Lavender Moon Society hold, as protected by Article I § 11 of the Washington State Constitution and the First Amendment of the U.S. Constitution.[11] However, courts have consistently held that regulating the practice of law is, in fact, a compelling governmental interest.

While the courts may not improperly burden the free exercise of religion, a successful claimant must do more than merely claim the government action in some way affects the claimant's religion. *United States v. Turnbull*, 888 F.2d 636 (9th Cir. 1989). There are two elements to an action against the government for infringing upon the free exercise of religion. First, the claimant has the burden of proving substantial governmental interference with a central tenant of the claimant's religious beliefs. Second, there must be an absence of a compelling governmental interest for the alleged infringement.

To show a free exercise violation, the religious adherent. . . has the obligation to prove that a governmental [action] burdens the adherent's practice of his or her religion by pressuring him or her to commit an act forbidden by the religion or by preventing him or her from engaging in conduct or having a religious experience which the faith mandates. This interference must be more than an inconvenience; the burden must be substantial and an interference with a tenet or belief that is central to religious doctrine.

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[11] These beliefs apparently include a belief that attorneys are people with whom it is bad to associate.

[T]he government must accommodate the religious beliefs unless there is a compelling state objective for [the burdensome practice] in the particular case. *Graham v. C.I.R.*, 822 F.2d 844, 850-51 (9th Cir. 1987) (citations omitted.). Claims based on religious convictions or rights of conscience do not automatically entitle persons to establish unilaterally the terms and conditions of their relations with the government. *Bowen v. Roy*, 476 U.S. 693, 702, 106 S.Ct 2147, 90 L.Ed.2d 735 (1986). Neither the federal nor the state constitutions give individuals a veto power over government actions which do not unduly prohibit the free exercise of religion. *Lyng v. Northwest Indian Cemeteiy Protective Ass'n*, 485 U.S. 439, 452, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988). The right of free exercise does not relieve an individual from the obligation to comply with valid and neutral laws of general applicability. *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 214, 840 P.2d 174 (1992). If government action burdens the exercise of religion, but the state demonstrates that it has a compelling interest in enforcing its enactment, that interest justifies the infringement of First Amendment rights. *First Covenant Church of Seattle*, 120 Wn.2d at 222.

Religious beliefs are strongly protected by both the federal and state constitutions. However, those protections are not an exemption from regular, legal processes. In *Turner v. American Bar Ass'n*, 407 F.Supp. 451 (N.D.Tex. 1975), the federal court addressed whether the plaintiffs therein had a constitutional right to have unlicensed "counsel" assist them in court proceedings. The U.S. District Court engaged in an exhaustive historical and legal analysis of the regulation of the legal profession. It observed that, "the practice of law is affected with a public interest and an attorney at law, as distinguished from a layman, has both public and private obligations, being sworn to act with all good fidelity toward both his client and the court." *Turner*, 407 F.Supp. at 474-75, quoting *United States v. Onan*, 190 F.2d 1 (8th Cir. 1951). It

noted that the U.S. Supreme Court has consistently held that the public interest is of sufficient magnitude to allow state legislatures to set reasonable qualifications for the legal profession, and reaffirmed the compelling interests that states have in the regulation of the practice of professions within their boundaries. *Turner*, 407 F.Supp. at 475, citing *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 95 S.Ct. 2004, 44 L.Ed.2d 572 (1975). The court held that the state's compelling interest in regulating the practice of law justified the refusal to allow the plaintiffs to have lay "counsel" assist them in court and did not unconstitutionally infringe upon the plaintiffs' right to freedom of religion. *Turner*, 407 F.Supp. at 480-8 1.

The Washington State Supreme Court has consistently articulated the state's compelling interest in regulating the practice of the law to protect the public interest.[12] Our Supreme Court has said: "It is our duty to protect the public from the activity of those who, because of lack of professional skills, may cause injury whether they are members of the bar or persons never qualified for or admitted to the bar." *Washington State Bar Ass'n*, 91 Wn.2d 48 at 60.[13] This is

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[12] *See* Washington State Bar Asso. 1'. State, 125 Wn.2d 901, 908, 890 P.2s 1047 (1995) (recognizing the state's interest in maintaining a competent bar).

[13] The Washington State Supreme Court has the power to determine which individuals possess the requisite skills, competence and ethics by requiring successful passage of the bar examination, continued legal education, and compliance with the Code of Professional Responsibility. *Hagan v. Kassler Escrow, Inc.*, 96 Wn.2d 443, 450, 635 P.2d 730 (1981). This regulatory authority stems from the beginnings of the United States. "Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States and the District of Columbia within their respective jurisdictions. The States prescribe the qualifications for admission to practice and the standards of professional conduct. They also are responsible for the discipline of lawyers." *Leis v. Flynt*, 439 U.S. 438, 442, 99 S.Ct. 698, 58 L.Ed.2d 717 (1979).

because "the unauthorized practice of law by laypersons is not in the public's best interest." *Washington State Bar Ass'n*, 91 Wn.2d 48 at 61.

Floyd Timothy, Ryan has not shown that the requirement of appearing through legal counsel unduly infringes upon the rights of members of the Lavender Moon Society.[14] The state has a well recognized, compelling interest in regulating the practice of law in Washington.

E. Requiring Lavender Moon Society to appear through an attorney at law does not violate its members' rights to freedom of association or freedom of speech.

Two other potential issues were not raised in this motion for reconsideration but need to be addressed. Each also fails to justify the unauthorized practice of the law. First, the motion for reconsideration does not claim that the Court's decision violated First Amendment rights of free association. Nevertheless, this Court notes that the First Amendment does not give litigants a right to have unlicensed attorneys in court on the theory that an alliance between a litigant and an unlicensed layman for the purpose of litigation is a protected association. *Turner*, 407 F.Supp. at 478.[15] Second, the motion for reconsideration does not claim violations of First Amendment free speech rights. However, that claim would also fail under the authority of *United States v. Turnbull*, 888 F.2d 636 (9th Cir. 1989), which held that a defendant's free speech

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[14] There is no indication that Article I § 11 of the Washington State Constitution requires a separate analysis. *See* First Covenant Church of Seattle, 120 Wn.2d at 223. *See also Africa v. Anderson*, 542 F.Supp. 224 (D.C. Pa. 1982) (holding that the plaintiff was not deprived of her religious freedom by the requirement that she be represented by court-appointed legal counsel).

[15] Even a community property interest does not make the right to pro se representation transferable from spouse to spouse. *Seattle v. Shaver*, 23 Wn.App. 601, 597 P.2d 935 (1979).

rights under the First Amendment were not violated when the court refined to appoint lay "counsel," instead of legal counsel, for the defendant, who objected to licensed attorneys on religious grounds.

## V. CONCLUSION

For the reasons set for above, the motion to reconsider is denied.

Dated this 24th day of May 2004.

/s/ Stephen J. Dwyer
STEPHEN J. DWYER
Judge

**APPENDIX N**

THE SUPREME COURT OF WASHINGTON

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No. 75573.6

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COREY MCCRAREY, a minor, by and
through his mother LORRIE CANADA,
*Respondent*,

v.

CYNTHIA SAMS, a single woman;
ESTATE OF BENJAMIN C. SAMS;
THE LAVENDER MOON SOCIETY, an unincoporated entity,
*Defendants*,

FLOYD TJMOTHY RYAN,
*Petitioner*.

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RULING DENYING REVIEW

This is a suit to recover damages for personal injuries suffered by Corey McCrarey, a minor, while on property owned by the Lavender Moon Society. The Society sought to defend by means of pleadings filed by Floyd Timothy, Ryan. Mr. Ryan identifies himself as the Elder of Truth, a corporation sole, over and for the Lavender Moon Society. The Snohomish County Superior Court ruled that despite his status as a corporation sole, Mr. Ryan, who is not an attorney, could not represent the Society in court. The court therefore struck the pleadings filed by Mr. Ryan. And when the Society did not thereafter appear through counsel, the court entered an order of default. Mr. Ryan, still purporting to plead on behalf of the Society, now moves for direct discretionary review. RAP 4.2; RAP 2.3.

Mr. Ryan contends generally that a person who is a corporation sole may represent his church in court proceedings just as he could represent himself. He also urges that a contrary ruling would violate the First Amendment, by forcing the Society's members to take an action that is contrary to their religious beliefs.[1] The superior court considered and rejected each of these claims. That court's cogent and thoroughly-researched analysis, set forth in its 12-page "Memorandum Decision Denying Motion to Reconsider Order Striking Pleadings," says everything that needs to be said. Mr. Ryan identifies neither obvious nor probable error, nor any departure from the accepted and usual course of judicial proceedings. RAP 2.3(b). The motion for discretionary review must therefore be denied, and the request for direct review is moot.

Plaintiff McCrarey, urging that Mr. Ryan's motion is frivolous, seeks attorney fees as a sanction under RAP 18.9. That request is also denied. Although many of Mr. Ryan's arguments are ill-conceived, badly-framed, or both, they are not so obviously devoid of merit as to qualify as frivolous.

/s/ [Illegible]
[Illegible]
Commissioner

August 26, 2004

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[1] The only religious tenet of the Society that is disclosed by the record before me is an aversion to lawyers.

## APPENDIX O

## THE SUPREME COURT OF WASHINGTON

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No. 75640-6

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BRUCE and AUDRY CHIKALLA,
Husband and Wife,

*Respondents*,

v.

STEVEN MILTON GRAY, aka STEVE M. GRAY, STEVEN MILTON: GRAY, STEVEN MILTON: STEVEN MILTON, STEVE GRAY, STEVEN GRAY, STEVE MILTON GRAY, JAY BROSSARD dba INHIMM LEASING AND MINISTRY, aka INHIMM LEASING AND MINISTRIES, aka INHIMM SERVICES, and NORTHWEST HOUSING TRUST, aka NHT,

*Petitioners*.

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### RULING DENYING REVIEW

Bruce and Audrey Chikalla sued Steven Gray, Northwest Housing Trust, and InHimrn Services for fraud and perhaps other sorts of wrongdoing in connection with a real estate transaction.[1] Mr. Gray, who is not an attorney, apparently appeared on his own behalf, and sought also to appear on behalf of Northwest Housing Trust and InHimm Services. Northwest Housing Trust and InHimm Services are said to be corporations sole.

By an order dated May 7, 2004, and an order denying reconsideration dated June 7, 2004, the Snohomish County

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[1] Nothing in the pleadings filed in this court enables a more intelligible description of the suit or the events that precipitated it.

Superior Court ruled that Mr. Gray could only represent himself and could not represent any other persons or 'entities, including specifically Northwest Housing Trust or InHimm Services. A notice for direct discretionary review "signed" only in the names of those two entities, was filed on June 23, 2004. This was followed by a motion for direct discretionary review and a statement of grounds for direct review; each of these pleadings is "signed" only by Northwest Housing Trust. The Chikalla's responded, opposing review. Mr. Gray, Northwest Land Trust, and InHimm Services then replied, in a pleading "signed" by each of them.

As can be seen, it is not altogether clear who should be regarded here as a petitioner. Putting that problem aside, on the merits the petitioner or petitioners urge that a corporation sole should be allowed to appear in court "in propria persona," and need not be represented by a member of the bar. But I recently denied a motion for discretionary review making this same argument in *McCrarey v. Sams*, No. 75573-6. A copy of my August 26, 2004, ruling in that case is attached. Also attached is a copy of the superior court's memorandum decision in *McCrarey*, which I continue to find persuasive. In addition to the contentions made by the *McCrarey* petitioners, the petitioner or petitioners here put forward an elaborate statutory construction argument based on the language and punctuation of RCW 24.12.020, and also criticize the nature and membership of the Bar Association. Neither argument convinces me to deviate from my prior ruling.

The superior court did not err. The motion for discretionary review is accordingly denied. The request for direct review need not be separately addressed.

/s/ [Illegible]
[Illegible]
Commissioner

September 3, 2004

**APPENDIX P**

THE SUPREME COURT OF WASHINGTON

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No. 75607-4
C/A No.52701-1-I

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Personal Restraint Petition of THOM SATTERLEE,
*Petitioner.*

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ORDER

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen Ireland, Chambers and Fairhurst, considered this matter at its November 3, 2004 Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion for Extension of Time to File Motion to Modify the Commissioner's Ruling is granted. The Petitioner's Motion to Modify the Commissioner's Ruling is denied.

DATED at Olympia, Washington this 4th day of November, 2004.

For the Court

/s/ [Illegible]
[Illegible]
Chief Justice

## APPENDIX Q

### AN ACT IN RELATION TO COUNTIES

Sec. 1. New counties to be liable for their proportion of the debt, and receive their proportion of the property.

2. The auditors of the two counties to meet and settle, and apportion the debts.

3. In case of disagreement, an umpire to be chosen.

4. Liquidation of debt, how made.

5 Repealing clause

Sec. 1 *Be it enacted by the legislative assembly of the Territory of Washington,* That when ever a new county shall be, or shall have been organized over territory which shall have been included within the limits of any other county or counties, the new county shall be liable for a reasonable proportion of the debts of the county from which it was taken, and entitled to its proportion of the property of the county.

Sec. 2 The auditor of the old county shall give the auditor of the new county reasonable notice to meet him on a certain day at the county seat of the old county, or at some other convenient place, to settle upon and fix the amount which the new county shall pay. In doing so they shall not charge either county with any debts arising from the erection of public buildings, or out of the construction of roads and bridges, which shall be and remain, after the division, within the limits of the other county. And the other debts they shall apportion to each county such a share of the indebtedness as may be just and equitable, taking into consideration the population of such portions of territory forming a part of the said counties while so united, and also the relative advantages derived from the old county organization.

Sec. 3 In case the two auditors cannot agree, they shall call a third person, not a citizen of either county or in any manner interested, whose decision shall be binding. In

case they cannot agree upon such third person, they shall each name one and decide by lot which it shall be.

Sec. 4 The auditor of the county indebted upon such decision, shall give to the auditor of the county his order upon the treasurer for the amount to be paid out of the proper fund as in other cases, and also make out a transfer of such property as shall be assigned to either county.

Sec. 5 All portions of the act to which this is supplemental are herby repealed.

Passed April 24, 1854

AN ACT

Sec. 1. The counties of this territory to be bodies corporate, for certain purposes

2. The conveyance for the use of the county to have the effect as if made ti the county.

3. New counties to be liable for their proportion of the debt, and receive their proportion of the property.

4. The auditors of the two counties to meet and settle, and apportion the debts.

5. In case of disagreement, an umpire to be chosen.

6. Liquidation of debt, how made.

7 Repealing clause

Sec. 1 *Be it enacted by the legislative assembly of the Territory of Washington,* That the several counties in this territory shall have capacity as bodies corporate, to sue and be sued in the manner prescribed by law; to purchase and hold such personal property as may be necessary to its corporate or administrative powers, and to do all other necessary acts in relation to all the property of the county.

Sec. 2 Every conveyance of lands or transfer of other property made in any manner for the use of such county, shall have the same force and effect as if made to said county in its proper and corporate name.

Sec. 3 That when ever a new county shall be, or shall have been organized over territory which shall have been included within the limits of any other county or counties, the new county shall be liable for a reasonable proportion of the debts of the county from which it was taken, and entitled to its proportion of the property of the county.

Sec. 4 The auditor of the old county shall give the auditor of the new county reasonable notice to meet him on a certain day at the county seat of the old county, or at some other convenient place, to settle upon and fix the amount which the new county shall pay. In doing so they shall not charge either county with any debts arising from the erection of public buildings, or out of the construction of roads and bridges, which shall be and remain, after the division, within the limits of the other county. And the other debts they shall apportion to each county such a share of the indebtedness as may be just and equitable, taking into consideration the population of such portions of territory forming a part of the said counties while so united, and also the relative advantages derived from the old county organization.

Sec. 5 In case the two auditors cannot agree, they shall call a third person, not a citizen of either county or in any manner interested, whose decision shall be binding. In case they cannot agree upon such third person, they shall each name one and decide by lot which it shall be.

Sec. 6 The auditor of the county indebted upon such decision, shall give to the auditor of the county his order upon the treasurer for the amount to be paid out of the proper fund as in other cases, and also make out a transfer of such property as shall be assigned to either county.

Sec. 7 This act to take effect and be in force from and after its passage.

Passed January 17th, 1863

**Appendix R**

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE**

| | | |
|---|---|---|
| In the Matter of the Personal Restraint of: | ) | No. 52701-1-I |
| THOM ELLIOTT SATTERLEE, | ) | ORDER DISMISSING PERSONAL RESTRAINT PETITION |
| Petitioner. | ) | |

Petitioner Thom Elliott Satterlee[1] has filed a personal restraint petition seeking relief from his conviction for unauthorized practice of law. Many of Satterlee's arguments will not be considered because they were rejected on direct appeal and Satterlee has not demonstrated that the ends of justice require their relitigation. The remainder of Satterlee's arguments are without merit. The petition is therefore dismissed.

In 2001, Satterlee's son-in-law, Joseph Webb, was involved in a law suit over a motor vehicle accident with Chih Hua Chen. Chen was represented in the litigation by attorney Elizabeth Armstrong with the law firm of Buckley and Associates. On October 14, 2001, Satterlee faxed two documents to Armstrong at the law firm: a

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[1] In his pleadings, petitioner refers to himself as "Bishop of the Way Thom Satterlee." Other pleadings filed below refer to petitioner alternately as "Thomas Satterlee," "Thom E. Satterlee," "Thomas Elliott Satterlee," and "Thom Elliot Satterlee." He is referred to in this order as "Thom Elliott Satterlee," as that is how he was named in the complaint in this matter.

"Notice of Special Appearance," and an "Objection to Filings Interposed for the Purpose of Harassment." Both documents were ostensibly sent on behalf of Webb, and were in the style and format of legal pleadings. Satterlee was not a member in good standing with the Washington State Bar Association at the time he sent the documents.

Based on these actions, the Snohomish County Prosecuting Attorney charged Satterlee with the unauthorized practice of law. Satterlee was convicted as charged following a jury trial. He was unsuccessful in his RALJ appeal, and his motion for discretionary review was denied. He has now filed this personal restraint petition..

To prevail, Satterlee must demonstrate either (1) actual and substantial prejudice arising from constitutional error, or *(2)* non-constitutional error that inherently results in a "complete miscarriage of justice."[22] Bald assertions and conclusory allegations are not sufficient to command judicial consideration and discussion in a personal restraint proceeding.[3]

This court will not reconsider a claim that was rejected on its merits on direct appeal unless the petitioner shows that reconsideration will serve the ends of justice.[4] In this petition, Satterlee raises several claims that were considered and rejected in his direct appeal. These claims

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2 In re Cook, 114 Wn.2d 802, 813, 792 P.2d 506(1990); In re Hews, 99 Wn.2d 80, 88, 660 P.2d 263

3 In re Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992).

4 In re Personal Restraint of Jeffrles, 114 Wn.2d 485. 487, 789 P.2d 731 (1990).

include challenges to the trial court's jury instructions on the definition of a non-lawyer, and the trial court's failure to No. instruct the jury on the exceptions to the definition of the practice of law contained in GR 24. Satterlee's challenges to Snohomish County's jurisdiction over the matter (premised largely on his contentions regarding the existence of "Freedom County") were also rejected on direct appeal. Additionally, Satterlee's challenge to the constitutionality of RCW 2.48.180, and his argument that GR 25 vested exclusive jurisdiction in the Practice of Law Board over the alleged practice of law without a license, were similarly considered and rejected on appeal. Satterlee has not demonstrated that the ends of justice require relitigation of these issues. They will therefore not be considered in this personal restraint petition proceeding.

Turning to the issues that were not raised in Satterlee's direct appeal, Satterlee contends that his right to practice religion was abridged by his prosecution for the unauthorized practice of law. Satterlee contends that his religion compelled him to deliver an admonition to the law firm in question.

> Religious free exercise embraces two concepts: the freedom to believe and the freedom to act. The first is absolute while the second, by the nature of our democracy, cannot be. An individual's conduct, therefore, remains subject to' regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection, and, in turn, exercise of the power to regulate must not unduly impose on

protected freedom.[5]
(citations omitted.)

Article I, § 11 of our Constitution is more protective of religious freedom than is its federal counterpart, the First Amendment of the federal Constitution.[6] Any burden on religious free exercise must withstand strict scrutiny.[7]

A party making a free exercise challenge has the initial burden of demonstrating that government action has a coercive effect on his or her religion. If a coercive effect is established, the burden shifts to the State to demonstrate that the restrictions serve a compelling state interest, and that said restrictions are the least restrictive means for achieving the interest.[8]

To establish the coercive effect, the party must first demonstrate that his or her religious convictions are sincerely held and central to the practice of his or her religion.[9] The State does not challenge the sincerity of Satterlee's convictions. Even when an individual's beliefs are "arguably religious," the court will recognize and No.

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5 State v. Balzer, 91 Wn. App. 44, 52, 954 P.2d 931 (1998), citing Cantwell v. Connecticut 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940); First Covenant Church v. Seattle, 120 Wash.2d 203, 226, 840 P.2d 174(1992).

6 Covenant Church v. Seattle, 120 Wn.2d 203, 226, 840 P.2d 174 (1992).

7 Munns v. Martin, 131 Wash.2d 192, 199, 930 P.2d 318 (1997).

8 Munns, 131 Wn.2d at 199.

9 Munns, 131 Wash.2d at 199.

consider them for purposes of constitutional analysis.[10]

But to establish a coercive effect, Satterlee must also demonstrate that the statute prohibiting the unauthorized practice of law burdens his free exercise of religion. This he has not demonstrated.. Assuming that Satterlee's religion compels him to deliver admonitions to the attorney and/or law firm in question, he has pointed to nothing to suggest that he was compelled to do so through the unauthorized practice of law.

By the same token, the State has met its burden of establishing that restrictions on the unauthorized practice of law serve a compelling state interest, and that the restrictions are the least restrictive means for achieving the interest. Satterlee's free exercise claim therefore fails.

Satterlee also argues that the faxes he sent were confidential because they contained a notice stating "Actual & Constructive Notice of Confidentiality." He contends that the admission of the documents was barred by the Privacy Act, RCW chapter 9.73. He specifically contends that the admission of the document was barred by RCW 9.73.040. This statute prohibits the State from intercepting or recording a private communication. The State did not intercept or record the communication Satterlee sent. The privacy act has no bearing on this case, and this argument is entirely without merit.

Satterlee also contends that the trial court erred in

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10 Balzer, 91 Wn. App. at 53, citing International Soc'y v for Krishna Consciousness, Inc. v. Barber, 650 F.2d 430. 439 (2d Cir.1981).

not permitting him to conduct "supplemental cross-examination" at trial. A criminal defendant has the right to represent himself, or to be represented by counsel, but does not have the right to hybrid representation.[11] This claim therefore fails.

Finally, Satterlee argues that the territorial constitution of 1878 is the supreme law of Washington, rather than the Washington State Constitution of 1889. This is something of a curious argument, given that various of the arguments Satterlee raised at the trial court, on appeal, and in this petition are premised on the Washington State Constitution of 1889. In any event, this argument is historically inaccurate and without merit. Washington's Constitution was ratified by the people on October 1, 1889, and came into effect on November 11, 1889, when Washington was granted statehood in accordance with the Enabling Act.[12] The constitution of 1878 never came into effect because the territory did not achieve statehood that year.[13]

Now, therefore, it is hereby

ORDERED that the personal restraint petition is

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11 State v. Hightower, 36 Wn. App. 536, 676 P.2d 1016 (1984).

12 See Historical Note, Constitution of the State of Washington, art. 1.

13 See Meany & Condon, Washington's First Constitution, 9 Wash.Hist.Q. 145 (1918), reprinted in E. Meany & J. Condon, Washington's First Constitution. 1878. and Proceedings of the Convention 19 (1924).

No. 52701-1-I

dismissed pursuant to RAP 16.11(b).

Done this 18th day of May, 2004.

Acting Chief Judge

**Appendix S**

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
**FOR THE COUNTY OF SNOHOMISH**

**BRUCE** and AUDREY **CHIKALLA,**
husband and wife,

Plaintiffs,

v.

**STEVEN MILTON** GRAY, aka **STEVE M. GRAY,** STEVEN MiLTON: CRAY, **STEVEN MILTON:, STEVEN MILTON, STEVE** GRAY, STEVEN **GRAY,** STEVE MILTON CRAY;, **JAY BROSSAR]),** dba INHIMM **LEASING AN])** MINISTRY, aka **INRIMM LEASING AND** MINISTRIES, aka **1NHLMM SERVICES, and NORTHWEST HOUSING TRUST,** akaNHT,

Defendant.

**NO. 04-2-07002-1**

ORDER DENYING **MOTION FOR RECONSIDERATION**

This matter comes before the above-entitled Court upon motion of Defendants InHimin Services and Northwest Housing Trust for reconsideration of the Order entered herein on May 7, 2004. The Court has considered Defendant's motion, and attachments, and Plaintifi's reply thereto, including the Declaration of Sarah Salutes.

The Court finds that a "corporation sole" (R.CW 24.12) may only appear in court through a licensed attorney, similar to the rule applying to other entities such as corporations (profit or non-profit), partnerships and unincorporated associations, religious or otherwise,. See the case law attached to the Declaration of Sarah Sannes,

Therefore, it is the Order of this Court that Defendant's motion for reconsideration is DENIED and the Order entered herein on May 7, 2004 is affirmed in all respects.

DONE IN OPEN COURT

This 7th day of June, 2004.

James H. Allendorfer
Judge

**Appendix T**

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
**FOR THE COUNTY OF SNOHOMISH**

**BRUCE** and AUDREY **CHIKALLA,**
husband and wife,

Plaintiffs,

v.

**STEVEN MILTON** GRAY, aka **STEVE M. GRAY,** STEVEN MILTON: CRAY, **STEVEN MILTON:, STEVEN MILTON, STEVE** GRAY, STEVEN **GRAY,** STEVE MILTON CRAY;, **JAY BROSSAR]),** dba INHIMM **LEASING AN]) MINISTRY,** aka **INRIMM LEASING AND** MINISTRIES, aka **1NHLMM SERVICES, and NORTHWEST HOUSING TRUST,** aka NHT,

Defendant.

**NO. 04-2-07002-1**

ORDER on Plaintiff's Motion to strike pleadings and other relief

IT IS HEREBY ORDERED: Plaintiff's motion is granted.

1} Defendant Gray shall not be allowed to represent any other person or entity, including specifically, InHimm Services, a Washington non-profit entity **[a Corporation Sole, a creation of God not**

**Washington State**], Northwest Housing Trust NHT, another Washington non-profit entity [another Corporation Sole created by God].

2} No appearance has been made by the Corporation Soles in this matter by any action of Defendant Gray.

3} No person may act for or re-present any other person or legal entity in this case unless authorized to practice law in the State of Washington by order of the Supreme Court [Temple of Justice].

4} The third party claims filed by Mr. Gray on Behalf of the corporate entities [**Corporations sole created by God over which Steven Milton: Gray is the sole ordained overseer**] InHimm Services and Northwest Housing Trust against Wells Fargo Home Mortgage are

DONE IN OPEN COURT

This 5th day of July, 2004.

Illegible

Judge

Appendix U

THE SUPREME COURT OF WASHINGTON

ORDER
No. 75640-6
Snohomish County No. 04-2-07002-1

BRUCE and AUDREY CHIKALLA, husband and wife
Respondents,
V.
STEVEN MILTON GRAY, aka STEVE M. GRAY, STEVEN MILTON: GRAY, STEVEN MILTON, STEVE GRAY, STEVEN MILTON GRAY, JAY BROSSARD dba INHIMM LEASING AND MINISTRY, aka INHIMM SERVICES, and NORTHWEST HOUSING TRUST, aka NHT,
Petitioners.

Department I of the Court, composed of Chief Justice Alexander and Justices Johnson, Sanders Bridge and Owens, considered this matter at its November 3, 2004, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

that the Petitioner's Motion to Modify the Commissioner's Ruling is denied.

DATED at Olympia, Washington this 3rd day of November, 2004.

For the Court

_____
Chief Justice

(2)
Supreme Court, U.S.
FILED
MAY 2 - 2005
OFFICE OF THE CLERK

No. 04-1312

IN THE

# Supreme Court of the United States

BISHOP OF THE WAY THOM SATTERLEE, DIRECTOR NORTHWEST HOUSING TRUST STEVEN MILTON: GRAY AND NAZIRITE ELDER OF TRUTH FLOYD TIMOTHY: RYAN,
*Petitioners*,

v.

TERRITORY/STATE OF WASHINGTON, as agent for the United States of America; BRUCE AND AUDREY CHIKALLS; WELLS FARGO HOME LOAN, CORY REIN; QUALITY LOAN SERVICE CORP, FIRST HORIZON HOME LOAN CORPORATION, WILSHIRE CREDIT CORPORATION, AND COREY MCCRARY, a minor, by and through his mother LORRIE CANADA,
*Respondents*.

**On Petition for a Writ of Certiorari to the Supreme Court of the State of Washington**

## RESPONDENTS FIRST HORIZON HOME LOAN CORPORATION AND QUALITY LOAN SERVICE CORP.'S BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Whether the State's assertion that it is the "Creator" and therefore can foreclose non-members of State's established religious institution from acting to protect their property rights and interests, and whether the establishment of a State religion can constitutionally and lawfully deny and prevent the inhabitants of Washington state the quiet enjoyment and exercise their property and political rights under the United States' Constitutional "guarantee to every state in this union [of] a republican form of government."

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IN THE

# Supreme Court of the United States

No. 04-1312

BISHOP OF THE WAY THOM SATTERLEE, DIRECTOR NORTHWEST HOUSING TRUST STEVEN MILTON: GRAY AND NAZIRITE ELDER OF TRUTH FLOYD TIMOTHY: RYAN,
*Petitioners*,

v.

TERRITORY/STATE OF WASHINGTON, as agent for the United States of America; BRUCE AND AUDREY CHIKALLS; WELLS FARGO HOME LOAN, CORY REIN; QUALITY LOAN SERVICE CORP, FIRST HORIZON HOME LOAN CORPORATION, WILSHIRE CREDIT CORPORATION, AND COREY MCCRARY, a minor, by and through his mother LORRIE CANADA,
*Respondents*.

**On Petition for a Writ of Certiorari to the Supreme Court of the State of Washington**

## RESPONDENTS FIRST HORIZON HOME LOAN CORPORATION AND QUALITY LOAN SERVICE CORP.'S BRIEF IN OPPOSITION

## OPINIONS BELOW

The Opinion and Dissent of the Washington State Supreme Court in Cedar County Committee v. Munro is reported at 134 Wn.2d 377, 950 P. 2d 446 (1998).[1]

[1] This is the case referenced by Petitioners in their Petition for Writ of Certiorari. However, Respondents First Horizon Home Loan Corporation

## JURISDICTION

It is the respectful position of Respondents that this Court lacks jurisdiction to hear this matter with regard to First Horizon Home Loan Corporation and Quality Loan Service Corp.

## STATEMENT

1. Identification of the Parties. First Horizon Home Loan Corporation is a mortgage lender who conducts business in the State of Washington. On or about August 4, 2000, Eric and Amy Roehrich ("Roehrich") executed a note and deed of trust in favor of First Horizon Home Loan Corporation ("First Horizon") concerning real property commonly known as 8003 66th Street NE, Marysville, Snohomish County, Washington (the "Property").

On or about September 11, 2003, Petitioner Steven Milton: Gray ("Gray") recorded a document entitled "Note" which purported to discharge Roehrich's obligation to First Horizon. On or about November 5, 2003, Roehrich executed a Quit Claim Deed in favor of Gray as well as a deed of trust. Some time prior to this recording of the Quit Claim Deed, Roehrich stopped making their regular, monthly mortgage payments to First Horizon.

As a result of this default on Roehrich's mortgage payments, First Horizon instructed Quality Loan Service Corp ("Quality"), Trustee under the Roerich deed of trust, to commence a non-judicial foreclosure on the Property in order to satisfy the debt. On or about April 16, 2004 a Notice of Trustee's Sale was issued, recorded and served on Roehrich and Gray by Quality.

---

and Quality Loan Service Corp have absolutely nothing to do with this cited case as will be discussed further below.

2. Gray subsequently instituted litigation in Snohomish County Superior Court under cause no. 04-2-11104-6 against Quality and First Horizon alleging that that the debt, giving rise to the deed of trust, had been paid in full. Quality and First Horizon prevailed in this litigation when they were granted summary judgment on November 11, 2004. (Rep. App. 1a-2a.)

3. Gray then appealed the Snohomish County Superior Court litigation to the Supreme Court of the State of Washington on November 18, 2004 under cause no. 76316-0. The Supreme Court of the State of Washington has not ruled on this matter, in fact, due to motions for extension filed by Gray, the briefs have not even been filed. The most recent Order from the Supreme Court of the State of Washington dated March 31, 2005 is a Ruling Denying Gray's Motion to Supplement the Record. (Rep. App. 3a-4a.)

4. Gray's Petition for Writ of Certiorari to the Supreme Court of the State of Washington, outside of the caption naming First Horizon and Quality as Respondents, fails to reference what has transpired in the lower Court or his pending appeal to the Washington Supreme Court. Confusingly, Petitioners do not seek any form of relief from this Court concerning the ruling of the Snohomish County Superior Court or permission to by-pass the pending appeal in the Supreme Court of the State of Washington. Respondents First Horizon and Quality are not even referenced by incorporation in the Appendices. (Pet. 1-19; Pet. App. 1a-83a.)

5. Respondents First Horizon and Quality have no relationship, no pending litigation, and no former litigation with Bishop of the Way Thom Satterlee or Nazirite Elder of Truth Floyd Timothy: Ryan, Petitioners. Respondents First Horizon and Quality have no relationship, no pending litigation, and no former litigation with Territory/State of Washington, Bruce and Audrey Chikalls [sic], Wells Fargo, Wilshire

Credit Corporation, Carey McCrary or Lorrie Canada, Respondents.

6. Instead of appealing the lower Courts granting of the summary judgment motion, Petitioners are seeking review of Petitioner, Bishop of the Way Thom Satterlee's, criminal conviction (Pet. 6-7.); Petitioner, Director Northwest Housing Trust Steven Milton: Gray's, "denied hearing" and "denial of fundamental due process" in a State Supreme Court case (Pet. 7-8.); and Petitioner, Nazirite Elder of Trust Floyd Timothy: Ryan's, "denied hearing" in a State Supreme Court case (Pet. 8.).

## ARGUMENT

### A. Jurisdiction

Supreme Court Rule 10 concerning jurisdiction on a writ of certiorari sets forth three reasons why this Court would grant review.[2] The applicable section to the case at bar is Supreme Court Rule 10(b) which conveys jurisdiction if it is shown that "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeal."

This rule is further articulated by 28 U.S.C. Section 1257 which states: "Final judgment or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution . . ." See also *Flynt v. Ohio*, 451 U.S. 619

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[2] Supreme Court Rule 10(a) does not apply since Petitioners do not allege that two or more Court of Appeals have conflicted in their decisions concerning the matter. Although the State Court has issued rulings in Petitioners' other cases, Rule 10(c) does not apply as none of these rulings involved Respondents, First Horizon Home Loan Corporation or Quality Loan Service Corp.

(1981) (reviewing state court decision is generally limited to final judgment); *Montgomery Bldg. & Const. Trades Council v. Ledbetter Erection Co.*, 344 U.S. 178 (1952) ("Requirement that final judgment or decree be rendered by highest court of state before Supreme Court may intervene in state litigation is not a mere technicality, to be easily scorned, but an important factor in the smooth working of our federal system."); *West Virginia Motor Truck Ass'n v. Public Service Commission of W. Va.*, 348 U.S. 881 (1954) (requiring a final judgment or decrees from the state courts to prevent exercise of jurisdiction by piecemeal review).

As stated above, the Supreme Court of the State of Washington has yet to rule on the pending appeal involving Respondents First Horizon and Quality. Thus, no final judgment or decree from a state court has been issued yet and this Court lacks jurisdiction pursuant to 28 U.S.C. Section 1257.

**B. Technical Merits**

Petitioners have failed to comply with Supreme Court Rule 14 concerning the contents of a Petition for a Writ of Certiorari with regard to Respondents First Horizon and Quality.

First, Petitioners have failed to comply with Rule 14(a), which requires a statement of the case. The lower court litigation with Respondents First Horizon and Quality is not even mentioned.

Second, Petitioners have failed to comply with Rule 14(d), which requires citations to orders entered in the case by other courts. Again, the filed Petition makes no reference to the litigation with Respondents First Horizon and Quality, and the existing Order in the case is not even attached in the Appendix.

Third, Petitioners have failed to comply with Rule 14(e), which requires a statement of the basis for jurisdiction. The

Petition does reference constitutional provisions relating to the other cases, but no reference is made to Respondents First Horizon and Quality, and certainly no reference to the pending Supreme Court of the State of Washington appeal.

Fourth, Petitioners have failed to comply with Rule 14(f), which requires statutory citations be provided. The Snohomish County Superior Court action involving Respondents First Horizon and Quality, relies on RCW 61.24, et. seq. and whether summary judgment should have been granted under Washington State Court Rule 56. There is no mention of these provisions by Petitioners.

Finally, Petitioners have failed to comply with Rule 14(g), which requires a statement of the facts relating to the question(s) presented. Again, Respondents First Horizon and Quality, are not even mentioned by Petitioners. The manner in which the Petitioners present their Petition definitely does not describe, with sufficient particularity, enough information to allow this Court to make an informed decision on the merits of the requested relief.

### C. Merits of the Case

Petitioners brief completely and utterly lacks merit with regard to Respondents First Horizon and Quality, in that they are not mentioned, the lower court's opinion is not referenced, the Supreme Court of the State of Washington appeal is still pending, and ultimately the question of the separation of church and state has absolutely nothing to do with non-payment of a mortgage debt. The actions of Petitioners can only be viewed as a mechanism to again stall the Trustee's sale of the secured property.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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## APPENDIX A

SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

[Filed Nov. 10, 2004]

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Case No.: 04-2-11104-6

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STEVEN MILTON GRAY, *et al*,
*Plaintiffs*,

vs.

QUALITY LOAN SERVICE, *et al*,
*Defendants*.

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### ORDER GRANTING DEFENDANTS QUALITY and FIRST HORIZON'S MOTION FOR SUMMARY JUDGMENT AND RELEASING LIS PENDENS

THIS MATTER having come on for hearing before the undersigned, upon the motion of the defendants Quality Loan Service and First Horizon Home Loan Corporation for an order for summary judgment in this matter and releasing the Lis Pendens recorded by Plaintiffs in this matter;

The Court having examined the file, considering the moving and opposition papers, arguments of counsel and the following specific documents:

1. Defendants Brief in Support of Motion for Summary Judgment;
2. Request for Judicial Notice of Title Documents;
3. Declaration of Ed Hyne in Support of Motion for Summary Judgment;
4. Plaintiffs' Affidavit of Disputed Material Issues of Fact;

5. Plaintiff's Reply to Motion for Summary Judgment;

6. Defendants' Reply to Plaintiffs' Affidavit of Material Issues of Facts;

7. Plaintiffs' Memorandum of Law; and

8. Defendants' Reply to Plaintiffs' Memorandum of Law.

9. Response to Defendant's reply, filed 11-8-04,

10. Affidavit of Steven Milton: Gray filed 11-8-04.

1. IT IS HEREBY ORDERED that defendants Quality Loan Service and First Horizon Home Loan Corporation's motion for summary judgment is hereby granted;

2. IT IS FURTHER ORDERED that plaintiffs Complaint against defendants Quality Loan Service and First Horizon Home Loan Corporation is hereby dismissed with prejudice;

3. IT IS FURTHER ORDERED that plaintiffs' Lis Pendens recorded under Snohomish County Auditor's File No. 200407160407 on July 16, 2004 is hereby released since the underlying litigation is dismissed with prejudice; and

4. IT IS FURTHER ORDERED that defendants Quality and Litton may proceed with a foreclosure sale.

DONE IN OPEN COURT: November 10, 2004.

/s/ Judge Dwyer
JUDGE DWYER

Presented by:
McCarthy & Holthus, LLP

/s/ Katrina E. Glogowski
KATRINA E. GLOGOWSKI, WSBA # 27483
Attorneys for Defendants Quality and First Horizon

## APPENDIX B

THE SUPREME COURT OF WASHINGTON

[Filed Mar. 31, 2005]

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NO. 76316-0

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STEVEN MILTON GRAY, Director of Northwest Housing Trust and InHimm Services and Ministries, Washington Corporation Sole,

*Petitioner*,

v.

QUALITY LOAN SERVICES CORPORATION, a foreign corporation; FIRST HORIZON HOME LOAN CORPORATION, a foreign corporation; WILSHIRE CREDIT CORPORATION, a foreign corporation,

*Respondents*.

---

### RULING DENYING MOTION TO SUPPLEMENT

Steven Milton Gray, apparently representing himself and purportedly also on behalf of "Northwest Housing Trust" and "InHimm Services and Ministries," has appealed to this court from a summary judgment entered by the Snohomish County Superior Court. In a statement of arrangements filed December 30, 2004, Mr. Gray said that he had ordered a verbatim report of proceedings for a superior court hearing held October 19, 2004, and also said that no record was kept of any other proceedings. He did not then suggest any intent to attempt to prepare or submit any narrative or agreed report of proceedings (see RAP 9.3 and 9.4) of any superior court hearing other than the October 19 hearing.[1]

---

[1] The verbatim report of the October 19 hearing has since been received by this court.

On January 6, 2005, Mr. Gray filed an "amended" statement of arrangements, purporting to order verbatim reports of superior court proceedings held on July 22, 2004, August 19, 2004, and October 4, 2004. He seems to have known, however, that no such reports could be produced. And he still did not suggest any intent to rely upon narrative or agreed reports.

On February 17, 2005, Mr. Gray filed what he titled a "Motion to Supplement the Record of Proceedings," in which he asks "for time to supplement the record by preparation and filing of narrative reports of proceedings for the trial court hearings where no record of the proceedings was made." Mr. Gray does not say why he needs more time, or how much time he thinks he needs. Nor is it at all clear how the various other superior court proceedings, whatever their nature, might relate to this appeal.

Under RAP 9.5(a), Mr. Gray had 60 days after filing his statement of arrangements to file either a narrative or an agreed report of proceedings. Without explanation he did not do so, nor does it appear that he has even yet attempted to do so. Without some demonstration that additional record might be necessary to fairly decide this appeal, and some indication when that additional record might be forthcoming, I see no basis to justify the delay that Mr. Gray requests.

The motion to supplement the record of proceedings is denied.

/s/ Geoffrey Crooks
Commissioner

March 31, 2005